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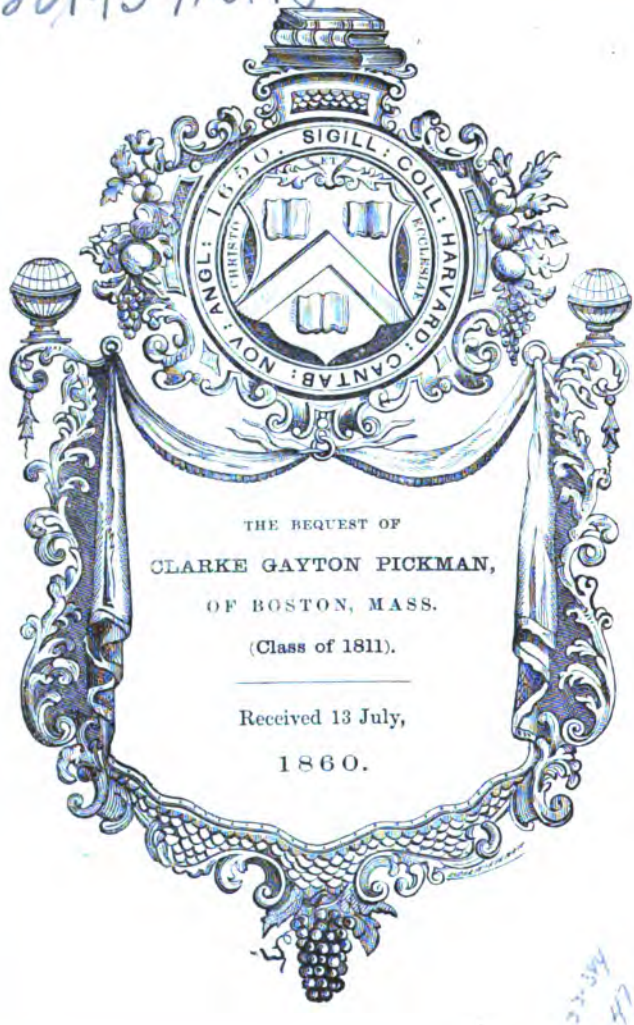
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THE BEQUEST OF

CLARKE GAYTON PICKMAN,

OF BOSTON, MASS.

(Class of 1811).

Received 13 July,

1860.

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P. Gaylon Pickman

24. October - 1935 -

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THE LIVES

OF THE RIGHT HON.

FRANCIS NORTH, BARON GUILFORD,

LORD KEEPER OF THE GREAT SEAL,

UNDER KING CHARLES II. AND KING JAMES II.

THE HON. SIR DUDLEY NORTH,

COMMISSIONER OF THE CUSTOMS,

AND AFTERWARDS OF THE TREASURY, TO KING CHARLES II.

AND

THE HON. AND REV. DR. JOHN NORTH,

MASTER OF TRINITY COLLEGE, CAMBRIDGE,

AND CLERK OF THE CLOSET TO KING CHARLES II.

BY

THE HON. ROGER NORTH.

A NEW EDITION.

WITH NOTES AND ILLUSTRATIONS, HISTORICAL AND BIOGRAPHICAL.

IN THREE VOLUMES.

VOL. I.

LONDON:

HENRY COLBURN, NEW BURLINGTON STREET.

1826.

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1860, July 13.
Pickman
Bequest.
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LONDON:
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THE

EDITOR'S PREFACE.

THE following Lives were originally published after the author's death, in the years 1740 and 1742, in two volumes, in quarto. Since that period the Life of the Lord Keeper Guilford has been republished in an octavo form, but the Lives of Sir Dudley North and Dr. John North have never been reprinted, and are become very scarce. In the present edition the three pieces of biography, which, in fact, form only one work, are again presented to the public in the uniform shape, in which it was doubtless the intention of the author that they should appear.

Independently of the interest which these Lives possess as works of pure biography, they derive a very considerable importance from their historical character. The light, which they throw upon a period described by Mr. Fox as "one of the most singular and important of our history," and the disclosures which they present of the court intrigues of that day, so difficult to be understood, even with

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all the illustrations which the researches of later times have produced, are perhaps greater than those to be derived from any other Memoirs relating to the same period, with the exception of Burnet, and the lately published Stuart MSS. The writer, the Hon. Roger North, enjoyed the most ample means of informing himself accurately upon all the topics of the day, not only from the station in society which he occupied himself, but from his intimate connexion with the Lord Keeper Guilford. In detailing the public life of the latter, he has not omitted to notice, and comment upon, every great political transaction which occurred in the later years of Charles II.'s reign, and during the short government of his successor. The party views, which he takes of public events, ought perhaps to be regarded as conferring an additional value upon his pages; for in every historical inquiry, the state of parties and of public feeling is one of the most material and difficult objects of research. From the Restoration to the Revolution, the country was divided into numerous factions. The court party, during the latter years of Charles's reign, had gradually been separating into two bodies; the first, the adherents of the Duke of York, including not only the conscientious Catholics, but all who were willing, under pretence

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of religious scruples, to secure the favour of the heir presumptive; and the latter, the partisans of the Church of England. The political sentiments of the two parties differed in much the same proportion as their religious tenets. The Duke of York and his followers saw no mode of enforcing their opinions, or even of enjoying them in security, unless by the establishment of an arbitrary authority in the Crown: popery and absolute power were never separated in their speculations. The Church of England courtiers, on the contrary, though anxious to maintain, and even to extend, all the prerogatives of the Crown, so as to preserve the country party, or the *faction*, as they were termed, in the state of depression to which the Restoration had reduced them, viewed with great jealousy the attempts of James and his friends to secure that despotic authority, which must necessarily terminate in the destruction of the establishment: of this Church of England party, the Lord Keeper Guilford was the acknowledged head. In point of numbers he was ill supported; the Earl of Rochester and Sir Leoline Jenkins, with, perhaps, the addition of Godolphin, being almost his only supporters in the cabinet. The views and objects entertained by this party, and the sentiments with which they regarded their adversaries,

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are minutely detailed in the Life of the Lord Keeper. The intrigues of James and his partisans are there clearly developed; and it is fully admitted that they tended to the establishment of an absolute authority in the Crown. No other of the court memoirs of the day contains so complete and candid an exposition of the objects with which James ascended the throne.

The Life of the Lord Keeper Guilford is likewise highly curious, on account of the many portraits that it presents of the most celebrated persons of the time, which, though displaying the colours of a party-writer, are yet, in many instances, striking and admirable likenesses. Of Jefferies (to whom no epithet can be applied sufficiently descriptive of his base and brutal nature) a greater number of characteristic anecdotes are preserved, than are to be met with in any other memoir-writer. Indeed, in his account of all the great lawyers of that period, with most of whom he was in habits of familiar intercourse, the author is singularly copious and amusing; although his prejudices have, in several instances, and particularly in the case of Sir Matthew Hale, led him into very injurious misrepresentations. With regard to the character of Lord Guilford himself, although the biographer has evidently delineated

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it under the influence of feelings which rendered it impossible for him to be truly impartial, he has yet stated all his facts so candidly and ingenuously, that we have little difficulty in forming a just estimate of the Lord Keeper's real character. As a statesman, he was strictly honest, according to his own notions of political honesty—which, however, were not, it must be confessed, of the highest and purest kind. His prejudices were all on the side of prerogative; but they were yet bounded by some scruples in favour of the constitution, which prevented him from yielding, like Jefferies and Sunderland, to the mad designs of James II. As a lawyer and a judge, his merits, if not equal to the partial representations of his brother, must still be acknowledged to have been very considerable, and his integrity in the high offices which he filled, at a period not remarkable for the honesty of the public functionaries, was certainly highly creditable to him. But among his judicial merits, the most remarkable was the judicious zeal which he manifested in reforming the abuses of the courts in which he sate, and in his attempts to methodize and simplify the law. Had he presided for a longer period over the Court of Chancery, it is probable that improvements of a permanent and important nature

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would have been effected in the practice of that court—a laborious enterprise, which every succeeding chancellor, down even to our own day, has either neglected or resisted. In all the private relations of life, a more pleasing character than that of the Lord Keeper has seldom been delineated. Though not impelled by strong feelings, his kindness to his friends, and particularly to his immediate relatives, was great and unvarying; and few instances are perhaps to be found of four brothers, in mature life, so united and affectionate, as the subjects of the following Lives, and their zealous biographer.

The Life of Sir Dudley North differs very much in its character from that of the Lord Keeper. It is the history of a most ingenious merchant, who met with all the success which his ability and diligence merited. The narrative of his residence in Turkey is full of curious incident; and contains much matter illustrative of the history of our commerce at that period. The part which Sir Dudley North acted in the great dispute between the City of London and the Crown, is well known. He was one of the court sheriffs, whom the government imposed upon the city. This portion of his biography is, however, but slightly touched upon in the Life, as the author had de-

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tailed it at considerable length in the Examen. To the extraordinary abilities of Sir Dudley North, who had far preceded his age, in his opinions upon the subject of political economy, full justice has been done by a distinguished writer of our own day, to whose works a reference will be found in the following pages.

The Memoir of Dr. John North, with which the present volumes conclude, though it does not possess either that value, as a work of history, which distinguishes the Life of the Lord Keeper, or that lively amusement which the foreign adventures of Sir Dudley North supply, is yet full of its own peculiar interest. It presents an admirable picture of a scholar's life, and a no less afflicting and awful one of the illness and death, to which the habits of studious men too often lead.

In compiling these affectionate memorials of his brothers, the writer appears to have been chiefly actuated by his regard and veneration for their memory. Having survived them all, he was distressed to find the names of those whom he had so loved and honoured, passing rapidly into oblivion. During their lives, his happiest moments were spent in their society; and after their death, he found his greatest consolation in recording their history. This he has done with a minute-

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ness of detail, which to himself appeared to require an apology, but which, in fact, is one of the most attractive qualities of his style. His writings have the effect of introducing the reader, as it were, into the presence of the party, so lively and natural are the touches of his pen.

In presenting a new edition of the Lives of the Norths to the public, the party-prejudices of the writer seemed, to the editor, to render some explanatory notes absolutely necessary. To these he has likewise added such occasional illustrations, of an historical and biographical character, as, it appeared to him, might, without impertinence, be introduced.

Fig-tree Court, Temple,
February, 1826.

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TO THE RIGHT HON.

FRANCIS, LORD NORTH AND GUILFORD,

ONE OF THE LORDS OF THE BEDCHAMBER
TO HIS ROYAL HIGHNESS THE PRINCE OF WALES.

MY LORD,

IT is a piece of justice done to the memories of great and good men, who have been active in the service of their country, when their conduct and behaviour is set in a true light, and their characters cleared from all exceptions whatsoever, which may proceed either from ignorance of the truth, or party rage. And it must afford no less encouragement to the present age, to follow their steps, when they shall find it is not often that a man of worth appears upon the great stage of the world, but after he has finished the part he was to act, and made his *exit*, some one or other rises up, and undertakes to vindicate the character of his departed friend.

The performance of this, my Lord, appears to have been one of the principal ends the honourable author had in view, when he composed the following sheets: for though truth in history, and the public good flowing from thence, had ever the greatest share in his inducements, whenever he

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set pen to paper; yet here there must be something put to the account of gratitude. And how large a debt of this nature must be due, from any one, to him that was the best of brothers and the best of friends, the whole world must be sensible. How well the writer has succeeded in his attempt to discharge it, must be left to the determination of those who shall peruse this work.

And the same arguments ought to be no less prevalent with me towards the sending it abroad into the world, and preferring my request unto your Lordship, that it may have leave to pass under your protection. For as my father thought it his duty to leave behind him these papers, not only for the sake of truth, but to make some return for the benefits heaped upon him by this illustrious ancestor of your Lordship's, and his best brother; so I think myself bound to make them public, for the former reason, and to beg they may be honoured with your Lordship's name in the front, as a public acknowledgment of the many favours your Lordship has conferred upon,

MY LORD,

Your Lordship's
most obedient,
and obliged
humble servant,
MOUNTAGU NORTH.

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THE

AUTHOR'S PREFACE.

It may not be improper to acquaint the reader, in some sort, with what is to be found in the following sheets; the design of which is to make some apology for an officious, I might say unqualified, undertaking to be a life-writer, and, as such, to dress up my remembrances of three honourable brothers and friends, the late Lord Keeper North, Sir Dudley North, and Dr. John North. They were all persons of celebrated worth and ability in their several professions; and whose behaviour upon the public stage, as well as in their retirements, was virtuous, wise, and exemplary. But now, if they are not quite forgot, that little, which is whispered of them, inclines to the sinister, and is wider from truth, than the distance which we are now at from the time when they flourished: and, if we look out for their names in history, all is the same. There is a two-handed one, Mr. Echard, in folio, whose excellency is *coming after a worse*. The author, among his eulogies, could not find room to drop a good word of any of these, though

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he hath condescended to adorn the characters of departed quacks, poets, fanatics, and almanack-makers. When he could say no ill of them, it was prudent malice to say nothing. Better to forego the very marrow of history than do right to any of these. And if the consideration of common good, which always flows from the bright examples of good men, were not inducement enough, yet the usage of such poor-spirited writers, that hunt counter to that good, is a sufficient call to this undertaking; whereby I hope to rescue the memories of these distinguished persons from a malevolent intent to oppress them, and, for that end, bring their names and characters aboveboard, that all people may judge of them as they shall appear to deserve. I have reason to be concerned, lest my tenuity of style and language, not meeting with candid interpretation may, in some sort, diminish the worth that belongs to them. But I have no means of improvement in that affair; and must lay aside that scruple; for it is an office devolved upon me, which I cannot decline. There is no person, now living, who can, or at least will, do any thing towards it. Therefore, hoping for indulgence, I march on, and endeavour to rectify want of art by *copia* of matter, and that, upon honour, punctually true. But I am not at all concerned lest frequent eulogies (which, by way of *avant propos*, I must here de-

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clare will advance themselves) should make me appear as partial to my subject. For who is partial that says what he knows, and sincerely thinks? I would not, as some, to seem impartial, do no right to any. When actions are honourable, the honour is as much the history as the fact; and so for infamy. It is justice, as well historical as civil, to give to every one his due. And whoever engageth in such designs as these, and governs himself by other measures, may be a chronographer, but a very imperfect, or rather insipid, historian.

I must here just mention some things which concern all these three brothers in common; and that is their parentele and family relation: and then proceed to the lives, beginning with the eldest, the Lord Guilford, lord keeper of the great seal of England, then the second, Sir Dudley North, and come at last to Dr. John North, master of Trinity College, Cambridge.

Sir Dudley North, knight of the Bath, and Lord North, Baron of Kirtling (*vulgo Catlidge*) in Cambridgeshire, was their father. His father was Dudley also, and had three other children. First, a son named John, who had three wives, of whom the first best deserves to be remembered; for she left him an estate in St. John's-Court by Smithfield, upon the ground where the chief house and garden was placed; and now a set of fair

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houses are built, making three sides of a square, and is called North's-Court. He survived all his wives, and died without issue. The old lord had also two daughters, of whom one died single, the other, Dorothy, married the Lord Dacres of the south, and, by that match, had a son and a daughter; the son married the Irish Lord Loftus's daughter, and had divers children. He had an estate given him on purpose to change his name from Leonard (that of the Dacres family) to Barret. His eldest son is also matched, and hath children. His seat is at Bell-House Park, near Purfleet in Essex; and they write their name Barret, alias Leonard. The Lord Dacres had issue by a former wife, of whom the now Earl of Sussex is descended. After the death of the Lord Dacres, his widow, the Lord North's daughter, married Chaloner Chute, who was once speaker to the pseudo-house of commons. She had no issue by him; but his son Chaloner (by a former wife) marrying his wife's daughter (by the Lord Dacres) had issue three sons and a daughter. Chaloner, the eldest, died single; Edmund, the second, married the widow of Mr. Tracey, a daughter of Sir Anthony Keck, and having divers children, lived at the Vine in Hampshire. The youngest, Thomas, was once clerk of the crown in Chancery, and married ——— the daughter of ——— Rivet of Brandeston in Suffolk, and left children,

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of whom Thomas Leonard Chute, the eldest son, now lives at Pickenham in Norfolk. And here concludes all the descent from the old Lord North by his only married daughter the Lady Dacres.

That nobleman was a person full of spirit and flame; yet, after he had consumed the greatest part of his estate in the gallantries of King James's court, or rather his son Prince Henry's, retired, and lived more honourably in the country upon what was left, than ever he had done before.* He bred his eldest son Dudley, the father of these three brothers, after the best manner; for, besides the court, and choicest company at home, he was entered among the knights of the Bath, and sent to travel, and then into the army, and served as a captain under Sir Francis Vere. At length he married Anne, one of the daughters and coheirs of Sir Charles Mountagu. He served his country

* He was the author of a volume of miscellanies in prose and verse, entitled, *A Forest promiscuous of several Seasons' Productions.* In four parts. fol. 1659. "The prose," says Horace Walpole, "which is affected and obscure, with many quotations and allusions to scripture and the classics, consists of letters, essays, characters, in the manner of Sir Thomas Overbury, and devout meditations on his misfortunes. The verse, though not very poetic, is more natural, and written with the genteel ease of a man of quality." (*Royal and Noble Authors,* vol. i. p. 232.) Copious extracts from this volume are given in the *Memoirs of the Peers of England during the Reign of James I.*, p. 343.

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in divers parliaments, and was misled to sit in that of forty, till he was secluded. After which he lived privately in the country, and, towards the latter end of his life, entertained himself with justice-business, books, and (as a very numerous issue required) economy. He put out a little tract of that subject, with a preface lightly touching the chief crises of his life. Afterwards he published a small piece entitled "Passages relating to the Long Parliament," with an apologetic, or rather, recantation preface.* He wrote also the history of the life of the Lord Edward North, the first baron of the family, from whose daughter the dukes of Beaufort are descended. He was a christian speculatively orthodox and good; regularly charitable and pious in his family, rigidly just in his dealing, and exquisitely virtuous and sober in his person. All which will appear in his writings, although the style is not so poignant as his father's was. But, to pursue the relation, his lady, by the mother's side, was descended of Sir George Whitmore, once lord mayor of London; which opens a large kindred towards Wales, of which it is said that above thirty came into coparcenary shares of the estate of Sir

* Printed in the *Somers' Tracts*, (vol. vi. p. 565. Scott's edit.) Horace Walpole has negligently ascribed this tract both to its true author and to the Lord Keeper Guilford. (See *Royal and Noble Authors*, vol. ii. pp. 36, 63.)

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Charles Kemish. Her father was the before-mentioned Sir Charles Mountagu, of five the youngest brother, of the Boughton family, now honoured with a dukedom. From the other brothers as many noble families are also derived, as Manchester, Sandwich, and Halifax. Sir Charles had two other daughters, one married the Lord Hatton, and had divers children, and, amongst the rest, the incomparable* Captain Charles Hatton. The other daughter married Sir Edward Bash, of Hertfordshire, who died without issue; then she married Mr. John Cary of the Falkland family, and master of the buck-hounds under King Charles II., and died also without issue.

This last Dudley Lord North and his lady had six sons and four daughters who lived to appear in the world, besides some who died in minority, viz. Frances, Edward, and Dorothy. The eldest son was Charles, who received the honour of knighthood, and married Catherine the daughter of William Lord Grey of Wark, and was, in his father's lifetime, called by writ to the house of peers, by the title of Charles Grey of Rolleston. They had two sons and two daughters who sur-

* [The reason why the honourable author joins the epithet *incomparable* to this gentleman's name will be seen from a story which will be related in the life of Dr. John North.] *Note in the first edition.*

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vived. The eldest son, William, is the present Lord North and Grey, who is matched with Maria Margareta, one of the daughters of Mr. C. de jonge van Ellemete, late receiver of the United Netherlands.* The second son, Charles, a major in the late wars in Flanders, died there of a calenture. The eldest sister, Catherine, died at sea, coming from Barbadoes: and the youngest, named Dudleya, having emaciated herself with study, whereby she had made familiar to her, not only the Greek and Latin, but the Oriental languages, under the infliction of a sedentary distemper, died also; and both without issue. Her library, consisting of a choice collection of Oriental books, by the present Lord North and Grey, her only surviving brother, was given to the parochial library of Rougham, in Norfolk, where it remains. The Lord North's second son, Francis, the third son, Dudley, and the fourth, John, are the subject of the three life treatises intended to follow, where will be remembered the state of their families. The fifth son was Mountagu, a Levant merchant, who died without issue. The youngest, Roger, married Mary, the daughter of Sir Robert Gayer, of Stoke Poges, near Windsor, and having had

* William Lord North and Grey died without issue, 31st Oct. 1734; and on his death, the title of Lord North descended to Francis Lord Guilford, the grandson of the lord keeper.

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two sons, Roger and Mountagu, and five daughters, Elizabeth, Ann, Mary, Catherine, and Christian, lives (out of the way) at Rougham, in Norfolk.

Of the four daughters of Dudley Lord North, the eldest, Mary, was married to Sir William Spring, of Pakenham, by Bury, in Suffolk. She had issue a son, but lived not to have any more, and the son died in his infancy. The second daughter, Ann, married Mr. Robert Foley, a younger branch of the (now) Lord Foley's family; and their eldest son, North Foley, having married a daughter of Sir Charles Holt, of Warwickshire, lives now at Stourbridge in Worcestershire. The third daughter, Elizabeth, married Sir Robert Wiseman, a younger son of the Rivenhall family, in Essex, dean of the arches, who dying without issue, she is since married to the Earl of Yarmouth. The fourth and youngest daughter, Christian, married Sir George Wenieve of Brettenham, in Suffolk. And they have left divers children; of whom the eldest, John, married a daughter of Sir Christopher Musgrave, and now resides in the place of his father at Brettenham.

This is the family relation of these three brothers, whose lives are upon the carpet before me. So much of particularity concerning them (although a just pedigree ought to have taken in much more) may perhaps be thought superfluous, as not

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being of any general concern. Yet really the case is memorable for the happy circumstance of a flock, so numerous and diffused as this of the last Dudley Lord North's was, and no one scabby sheep in it, and considering what temptations and snares have lain in their way, is not of every day's notice. It was their good fortune to be surrounded with kindred of the greatest estimation and value, which are a sort of obligation to a good behaviour. It is very unfortunate for any one to stray from the paths of virtue, who hath such precautions, and sonorous mementoes, on all sides of him: and it is almost enough to be educated in a family wherein was no instance of irreligion or immorality either practised or allowed: such virtue or efficacy hath an early example to affect the manners of good-natured youth. I would not have it thought that, beyond this advantage, I hold forth a family relation, as matter of merit, to any one in particular; but say only that, allowing no peculiar intrinsic worth, in a particular person, derivable from the honour of his family (because his own value, and not his ancestors' must set him off), although such a circumstance is not to be slighted, yet there is some good comes of it; which is, that the descendants must know that the world expects more from them than from common men: and such a perpetual monitor is an useful companion. And if there be any persons of such

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upstart principles that, with them, antiquity of families is rather matter of ridicule than of honour, let them enjoy their epicurean prospect, and see their posterity run riot into destruction, before the earth covers the corruptible ingredients of their composition.

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THE LIFE

OF

THE RIGHT HON. FRANCIS NORTH,

LORD GUILFORD;

LORD KEEPER OF THE GREAT SEAL OF ENGLAND.

Introduction, showing the design and reason.

My design is to leave behind me all that I can remember or warrantably collect concerning the life of the Lord Keeper North. A work much needed; and to which I am indeed provoked, because I find an affected endeavour of a prevailing sort of men in these latter times, and especially the more solemn writers of English affairs, to suppress all memory of his lordship's name and worth, to the end that his character and behaviour in the course of his great employments should be utterly unknown to aftertimes, as if no such person had ever lived in the world. I shall allege but one instance, and that is an egregious one. A late double-columned historian,* in folio, of whom mention

* Kennet.

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has been made already in the preface, writing the affairs of England, and in particular what fell out in the reign of King Charles II., hath taken upon him to characterise the famous men that died in his several years; and yet of the Lord Keeper North no single word slips from his pen, and one must look very hard to find so much as his name in the whole work: and, considering the value of that great justitiar (which I hope will be made appear in what follows), is not so notorious partiality, in such a pompous writer of history, wonderful? But not only there, but in all the other writers of those times, when the quality of those things related require him to be named, however the actions or occasion might deserve, it is done in an ill-natured manner, and with a leer, implying rather disgrace than any honour to his memory. And since his death we do not find in ordinary converse, or consultation of things past, any mention of him, or, at most, but as one that had been preferred to serve turns; and so, dying, there was an end of him.

Declined fame in all things.

Now here, to make the fairest construction of this silence in a case so eminent, and ascribe it chiefly to ignorance, although I think time-servingness and malice hath the greatest share, I will show that in his lordship's case there was less obvious means for fame than in any other great man's case whatever. For first, he was quite out

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of favour with the busy agitating party of men in his time, then termed the fanatic party; and those are the chief architects of fame: and, having nothing ill to say of him, they would say no good, and therefore chose to say nothing at all. If he had acted in these men's measures, and, betraying his master, took in with them, and become their property, he had certainly been the most illustrious hero in the law that ever was heard of. Another reason is derived from his lordship's own conduct of himself, which was always with the greatest modesty, and the least affectation of fame that could be. He rather withdrew himself from it, as being, in his opinion, an empty vanity; and ever labouring to act well and substantially, as concerned for the truth and intelligence of things, and not for any honour to be got thereby, he scarce ever did any thing for show, or spoke a word for the sake of mere sound or ostentation; but in all he did, to have reason on his side, and to make himself therein readily understood, was all that he aimed at: otherwise he bore himself retired from public view and eclat as much as ever he could. It is no great wonder therefore, that nothing pompous hath been remembered of him. If he had carried it high, headed parties, and embraced the management of what had not belonged to him, and the like, it had been otherwise; or if he had printed his collections in the law, of which

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he had made some considerable, or the other tracts he had in his mind to make fit for the use of his time, or done any thing else, which ordinarily great men do for fame and honour, he might have left a name behind him great as he deserved; but he never let any thing come to the press under his name but what belonged to his office, or was absolutely necessary for his vindication. It is no wonder therefore, that (the malice or ignorance of historians apart) there is so little remembrance of this noble person's life and actions (so near his time as we are) now extant; and, probably, after a reign or two more, bating a formal list of Lord Keepers, that lets none escape, his very name will be forgot.

The engagements and means to this work.

Here is reason enough to incline any one, endued with competent information of the subject, and a literate capacity to digest and express what he knows thereof, to rescue this honourable person and his great abilities, his approved justice and integrity, and universal good-will, from utter oblivion, by writing the history of his lordship's life. But where do those qualifications concur? The very expectation of them puts me in mind of latter Lammas. But it is usual to say, what good cannot be done in perfection, as it should be, ought to be done, though but in part, or as it may be. And, upon force of that consideration, I am inclined to undertake it; for, if I am wanting in

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capacity to write as the subject deserves, I am capable of informing others who may do it better; and am therein farther urged by the consideration of my former felicities. For it was my good fortune to be so nearly allied to him, and, by circumstances of education and profession, so closely attached to his person, that we were almost inseparable. Therefore, upon the strength of the latter of these qualifications, whatever becomes of the former, which, in sense of my own inability, I forbear to claim, I am induced to undertake this great work, which I would have understood to be rather instructions, than history. And if I am required to give an account of my great confidence therein, I must allege that, if I am not the best instructed of any man living for it, it is my own fault; because I passed almost all the active time of my life in his company. And now almost all persons of his intimacy, capable or concerned to remember much of him, are dead, or at least, after so many years, thoughtless of all they might once have known concerning him: but I am at this time left a living and sensible witness of his most public and most retired behaviour; and moreover a well-qualified compurgator of all his thoughts and actions: and who else should be called upon to show to posterity what he was? And also that there was once a magistrate of a kind, since the loss of him (barring all comparisons) rather to be

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wished than hoped for. And not only to supply history, which (after the partial gree of the late authors) has been, to all good purposes, silent of him, but also to refel calumny, whether spread abroad in his life, to supplant his interests, and to enervate his authority, or late, published after his death, to depreciate his memory; of which several species of malice we had, and have yet, some extant, but little, and even that little very impotent and inconsiderable: yet I cannot but think it in me a sort of duty to puff away such slight dust, because calumny which riseth after a man's death (the most unworthy and degenerous of all) needs most a friend to retund it; because, as a man's authority and power ceaseth, impudence gets ground, and thinks to ramp it without check; but, of these affairs, the particularities are referred to their proper situation. And here I must not omit one of the chief impulses upon my spirits to undertake this work; I mean gratitude: for as, on the one side, no man is obliged to serve a friend or benefactor by any gross immoralities, for that must be termed conspiracy, not friendship; so, on the other side, no man ought to be wantiug to a friend, in any manner of justice, for no better reason than that some folks will misconstrue it, as being done for partiality. I own that all my portion of knowledge and fortunes are owing to him; which makes me a debtor in account of justice and

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honour due to his memory; and for clearing myself as well as I may, (protesting in the mean while to say nothing false or disguised,) shall I not say what is just and true of him? I defy all calumny on that account, and I hope to acquit myself accordingly. And, whereinsoever I may fail or come short of the fulness or ornament such a subject requires, I design securely to set down nothing but what either personally I know and can attest, find declared in his writings, received from his own mouth, or have from indubitable report of others nearly enough informed to be esteemed punctually true. I have another reason yet, which, for true value, may surmount all these; and that is a tendency to public good: a charm that all writers anoint their front with. Therefore I say only this, that if, in the character of a person of honour, I show an example of industry, ingenuity, probity, virtue, justice, and, in the course of all these, deservedly successful, without one minute retrograde, but concluding all at once by a natural death, and that in the height of his honour, I shall commit no act of disservice to mankind in general, and least of all to those of the nobility, whose descendants, embarking in the profession of the law, may find the greatest encouragement from it. It may be thought I have touched here too much upon the panegyric, and forget how hard it is to make good such promises.

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I must trust to that; and do but allege here, that the nature of this work, and my reasons for undertaking it, required no less; which being the proper introduction, I have not formalised upon what I am fully possessed is most true.

Method or disposition.

It will be hard to lead a thread, in good order of time, through his lordship's whole life; for there are many and various incidents to be remembered, which will interfere, and make it necessary to step back sometimes, and then again forwards; and to say truth, I have not the punctualities of truth at my command, and may err in some points of chronography. I shall therefore, for distinction sake, break the course of his lordship's life into four stages; whereof the first shall be from his lordship's infancy to his being qualified to practise in the law, and called to the bar: the second shall be from the time of his first practice until he was advanced to the post of a judge, and made Lord Chief Justice of the Common Pleas: the third, while he acted as judge of the Common Law, until he was preferred to be Lord Keeper of the Great Seal: and the fourth and last stage, while he sat as judge of Equity in the Chancery, and attended the affairs of state at court, until the time of his death, which happened at Wroxton, on the 5th of September, 1685. And in this method, I hope to evacuate my mind of every matter and thing I know and can remember

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materially concerning his lordship. And if some things are set down which many may think too trivial, let it be considered, that the smaller incidents in the life of a busy man are often as useful to be known, though not so diverting as the greater; and profit must always share with entertainment: and let this be the apology for some light passages that will be found related in the course of this work.

Writings how disposed.

His lordship left many papers wrote with his own hand, some more perfect than others, and very few entirely so; and those which are finished, or nearly completed according as he intended them, I have put together in collections; but as for those which are short and imperfect, consisting of some sketches of designs, hints, consultations, collections, inquiries, and the like, which commonly were the result of his thoughts and researches upon affairs then in agitation abroad, and are like painters' first scratches, which commonly have more spirit than their more finished pieces, I shall insert the most material of them in the text of the relations to which they belong; for these will represent his lordship's way of reasoning with himself and others, and how close his thoughts were applied to the substance and truth of things, more perhaps than (as was hinted of painters) his fuller tracts will appear to do; and by this means I hope to give a clear account of all

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I know or can gather of his lordship's life, interior and exterior, whereby, in one place or other, there may be found a great man's life and entire character; and besides what will serve to entertain any one who hath a mind to drone away a few minutes that sleep will not consume, and also improve (perhaps) some whom the love of truth, reason, and rectitude of will, shall dispose to be more attentive.

Family and parentele.

His lordship was the third son of the second Dudley Lord North, Baron of Kirtling, &c. as is to be found in the preface before this work, and therefore shall not reiterate it here. We have little to say of him during his minor years, but shall make amends afterwards; for from the first to the last of his manhood, he walked the public stage of business, ever erect and rising, and made no retreat or exit but one, and that (as I said before) was from the top of his preferment, and the world together.

School education and praying by the spirit.

His lordship was very young when he was first put out to school, and then had but indifferent tutorage, for his first master was one Mr. Willis, that kept a school at Isleworth. That man was a rigid presbyterian, and his wife a furious independent. Those two sects, at that time, contended for pre-eminence in tyranny, and reaping the fruits of too successful rebellion, which conjured up a spirit of opposition betwixt them, so that

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they hated each other more than either the bishops, or even papists themselves. Such is the ordinary curse of God upon men permitted to prosper in wickedness: and this woman was so zealous in her way, that thinking it a sin, she would scarce let her carnal husband have conjugal intimacy with her. She used to instruct her babes in the gift of praying by the spirit; and all the scholars were made to kneel by a bed-side and pray: but this petit spark was too small for that posture, and was set upon the bed to kneel with his face to a pillow; and in this exercise of spiritual prayer, they had their directory from her. I have heard his lordship say, that all he could remember of his performances, was praying for his distressed brethren in Ireland. Very often men in their lives cross the humour of the age in which they had their first education; and in fact it happened so here, for this youth went from one of these fanatic schools to another for divers years, and afterwards, being grown up, was very averse to fanaticism; as if he had in his education contracted rather a prejudice than a favour for it.

Bury, a cavalier school.

But much may be attributed to the finishing of him at Bury school, under Dr. Stevens, a cavalier master. He was so forward and exact a scholar there, that the bulky doctor, in his pedantic strain, used to say he was the crown of all his endeavours. Before he went to Cambridge, the master

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employed him to make an alphabetical index of all the verbs neuter; and he did it so completely, that the doctor had it printed with Lilly's grammar, for the proper use of his own school. This, however easy to be done, (being only transcribing out of the dictionary) was commendable; because boys ordinarily have not a steady application, and, being required, seldom perform, industriously and neatly, such a task as that is.

At St. John's College, in Cambridge, forward and facetious.

From this school he was translated to St. John's college, in Cambridge, where he was admitted fellow-commoner under one Mr. Frost, the 8th day of June, 1653. And there he improved at the same rate, and being a fellow-commoner, was acceptable to the very best of the society, as well for his company, which was more than ordinary agreeable and facetious, as for his forwardness in all ingenious studies, and the sciences called liberal. Here he learnt what was to be had of University philosophy, old and new: applied to mathematics, and made great advances in them, capable of the utmost course therein, if other affairs of his life, inconsistent with such applications, had not forbad that. But he was ever a judge of new propositions after the synthetic way (for the analytic was not then much professed) and if they failed could show where; and here he began his use of music, learning to play on the bass-viol, and had the opportunity of practice so much in his

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grandfather's and father's families, where the entertainment of music in full concert was solemn and frequent, that he outdid all his teachers, and became one of the neatest violists of his time. He was much encouraged and assisted in all ingenious studies by the conversation of one Mr. Matthews, of Sidney college, who was his elder brother's tutor, and very eminent for a master (literally) of all arts and sciences, and was entrusted with the education of divers noblemen as their tutor; and a famous man he had been indeed if his heart could have been showed without a microscope.

Admitted of the Middle Temple, by Mr. Chute.

His lordship was originally designed for the profession of the law; and accordingly, after two or three years spent at the University, removed to the Middle Temple, into a moiety of a petit chamber, which his father bought for him. He was admitted in the year ——,* when old Chaloner Chute was treasurer. It was he that sometime officiated as speaker to the pseudo-House of Commons, and had married the Lady Dacres,† his Lordship's aunt, and so was in the place of an uncle. This Mr. Chute was a man of great wit, and stately carriage of himself: I shall mention

* On a reference to the books of the society, it appears that the Lord Keeper was admitted a student on the 27th November, 1655.

† Dorothy, the daughter of Dudley the third Lord North.

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here what I have been credibly told as one instance of his loftiness, even while he practised in Chancery. It was in short but this: if he had a fancy not to have the fatigue of business, but to pass his time in pleasure after his own humour, he would say to his clerk, "Tell the people I will not practice this term;" and was as good as his word: and then no one durst come near him with business. But when his clerks signified he would take business, he was in the same advanced post at the bar, fully redintegrated as before, and his practice nothing shrunk by the discontinuance. I guess that no eminent chancery practiser ever did, or will do the like; and it shows a transcendent genius, superior to the slavery of a gainful profession. But to proceed: when Sir Dudley North, his lordship's father, carried him to his brother-in-law, then treasurer of the Middle Temple, to be admitted, he treated hard with him about the fine of admission, which is in the treasurer's power to tax, and he may use any one well if he pleaseth. Mr. Treasurer asked Sir Dudley what he was willing to give, and (the common fine being five pounds) he answered, Three pounds ten shillings, "Well," said the treasurer, "lay down the money." Which being done, he called for the young man's hat, and swept it all in and gave it him; and marking the admission nill, or nothing, "let this," said he, "be a beginning of your getting money here;" where his lordship made good the omen.

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How sedulously he applied himself to the study of the law, I need not allege; his performances in the course of his profession, to say nothing of his preferments (though sometimes perhaps owing to good fortune) demonstrate he was not wanting in that application: but it was singular and remarkable in him that, together with the study of the law, which is thought ordinarily to devour the whole studious time of a young gentleman, and at best is but an unpolite study, he continued to pursue his inquiries into all ingenious arts, history, humanity, and languages; whereby he became not only a good lawyer, but a good historian, politician, mathematician, natural philosopher, and I must add, musician in perfection. I have heard him say, that if he had not enabled himself by these studies, and particularly his practice of music upon his base, or lyra viol (which he used to touch lute fashion upon his knees) to divert himself alone, he had never been a lawyer. His mind was so airy and volatile, he could not have kept his chamber, if he must needs be there, staked down purely to the drudgery of the law, whether in study or practice: and yet upon such a leaden proposition, so painful to brisk spirits, all the success of the profession, regularly pursued, depends. And without acquiring a capacity of making a solitary life agreeable, let no man pretend to success in the law. I have heard his lordship often remember a lesson the citizens used to their apprentices — "Keep your

With the law studied arts and languages.

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shop, and your shop will keep you;" as being no less true of a lawyer with respect to his chamber. But he was far from being a recluse; and as he loved conversation, so at fit times he was abroad with agreeable company, at entertainments, such as the inns of court gentlemen ordinarily use.

Declined the usages of bad company.

I never heard that he frequented either dancing or fencing schools; which two rendezvouses are very dangerous as well as expensive to young gentlemen; and that consideration outweighs all the pretended advantages that the female faction propose from those assemblies. And for security of future good consequences, and escaping the bad, I think it may be a general rule in the institution of a lawyer, never to come to either; for since it is well known that the accidents of good or bad company determine, ordinarily, a young man to his happiness or ruin, and that the worst of company is to be met with there, one may bate the decorums of the step, or the skill of parry and thrust, in one who is to wear a long robe, and contend only with his oral faculty. I might say as much of places of game; but that entertainment is a gulph which swallows more elder than younger brothers, and more that have money gotten to their hands, than such as have but enough to live in a way as may enable them to get more; but I cannot say that his lordship was a stranger to any art or skill that was practised amongst

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the better sort of company. He joined in every decent thing; and whatever games were stirring, at places where he retired, as gammon, gleek, piquet, or even the merry main, he made one; but ever had a notable regard to his purse, to keep that from oversetting, like a vessel at sea that hath too much sail and too little ballast.

Hazards and advantages of youth.

It is impossible for any youth to gather sociable good qualities without running some hazard of the bad; and much of the better, where it happens, will be ascribed to a well-inclined nature, that, after excesses (which youth cannot wholly avoid) discerning the inconvenience, takes up. But yet, in some of the wavering and less thinking geniuses, the worst of company will cause the worst of effects; whereas, in a tolerable society at first, such natures might have come off well enough. It were rare sailing if winds and weather were either at command or foreseen. So, in the launching young people into the world, it were happy if natural propensities and company could be known beforehand, or modelled to the occasion. Therefore that great work ever did, and ever will, depend much upon the common accidents of human life; and it is a great question, whether too much, or too little use of overruling authority, or persuasive discourses, do most or least harm. Probably either, coming opportunely, may do good; but, inopportunely, excites

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aversion rather than reconciliation to what is so. Let a youth be prepared at home, without any prejudice of evil examples or encouragements, and then be sent out, as his lordship was, to shift for himself; the rest must be left to Providence.

Confined his living to his condition.

His lordship had reason, and also the good hap, to be sensible of his condition, and that it concerned him in the last degree to make the best of his profession. For his family was not in a posture to sustain any of the brothers, by estates to be carved out of the main sustentation of the honour. It was apparent that his lordship was far from a morose, or so much as a retired disposition; he had sprightly motives to follow the joys his fancy suggested, as much as any wit of them all, and was sensible of the labour and pains he was to undergo, and set himself to it as labourers to their work, for a livelihood; and after he had broke himself to the study of the law, so as might have rendered it easier to him, yet he had his inclinations to divert himself, and ramble as persons of better fortunes did. But, through the strength of his reason, he recollected himself, and persevered, and engaged in no entertainments abroad, that were inconsistent with his studies. I have heard him say more than once, that, if he had been sure of a hundred pounds a year to live on, he had never been a lawyer.

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His lordship's grandfather took a fancy to have him be with him in the country; for he loved to hear him talk of news, philosophy, and passages in London. He made him play at back-gammon, and fiddle whenever he thought fit; for which, all he got was saving a little charges at the Temple, and an annuity of twenty pounds a year; which latter was taken away from him in displeasure, as is related afterwards. But this course of life, together with bowling, fishing, billiards, park, hunting, visiting, and such country diversions, which might have plunged a young man in idleness, and resignation of all endeavours towards a profession, did him no hurt at all; but rather the contrary, for he always had his boxes of books up and down by the carrier; and, in the country, alone by himself, read in his course, and commonplaced full as much, or perhaps more than he should have done in London. And the only disadvantage he had there, was want of a studious society; but constantly at terms, he got leave to repair to London, and there recruited his discontinued friendships, which were of vast benefit to him, as will be related afterwards.

Attended in the country, but studied.

He used constantly the commons in the hall at noons and nights, and fell into the way of putting cases (as they call it), which much improved him; and he was very good at it, being of a ready

Used commons and putting cases.

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apprehension, a nice distinguisher, and prompt speaker. He used to say that no man could be a good lawyer that was not a put-case. Reading goes off with some cloud, but discourse makes all notions limpid and just; for, in speaking, a man is his own auditor (if he had no others at hand) to correct himself. Besides, there are diversities of opinions, and contentions in reasoning, which excite thoughts that otherwise would never have risen. And mistakes, almost incredible to the mistaker, being observed, cause a recurrence, for surety, to the authorities, where an inspection convinceth, and withal corrects the faulty assurance some will have in a mere memory.

Of common placing in the study of the law.

It was his lordship's constant practice to commonplace as he read. He had no bad memory, but was diffident, and would not trust it. He acquired a very small but legible hand; for, where contracting is the main business, it is not well to write, as the fashion now is, uncial or semiuncial letters, to look like pigs' ribs. His writing in his commonplaces was not by way of index, but epitome; because, as he used to say, the looking over the commonplace book on any occasion, gave him a sort of survey of what he had read about matters not then inquisited, which refreshed them somewhat in his memory: and that had not been obtained in a way of mere what and where, as

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the style of most indexes runs. When this manner of writing is comprehensive, or pregnant, it is called abridgment, of which there are divers large ones of the common law in print, as Fitzherbert, Brook, &c. and are like those the civilians call summists, which, with them, are not allowed as authority. Certainly it is an error for a student to peruse such; it being like reading over a dictionary, which never teacheth a language. And, for that reason, Coke's comment upon Littleton ought not to be read by students, to whom it is, at least, unprofitable; for it is but a commonplace, and much more obscure than the bare text without it. And, to say truth, that text needs it not; for it is so plain of itself that a comment, properly so called, doth but obscure it.* In the disposition of the titles, he chose rather to take many than few, and thereby to become forced (as some have done) to make out the rest by subdivisions; for it is easier to consult with many generals, to which the alphabet leans, than few with many subdivisions; the latter requires an exact skill in the

* In his "Discourse on the Study of the Laws," (p. 22.) North has observed that the Commentary of Sir Edward Coke "is the confusion of a student, and breeds more disorder in his brains than any other book can, that is not a mere index and abridgment." The practice of placing this inestimable work in the hands of the student, as an elementary treatise, is now deservedly discontinued.

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method, which, though well understood, is often forgot:* And therein Mr. Keeble's table to his statute-book is faulty; for if one would look for the title Executors, he must go to title Administrators, because the author thought fit to make that the general title for all, or most, testamentary matters. Were it not better to make executors, probate, devastavit, &c. titles express? He made divers essays towards a commonplace, which did not succeed: but it purchased experience, at the expense of so much paper, before his method and way of writing was settled and obvious to him; and then he made a very good one, such as may be styled an abridgment, which now remains with the Right Honourable the Lord Guilford. He used to say that no writing, though in a commonplace, however improper, was of any ill consequence; for, by making searches difficult, the very going to several titles, for the same inquiry, refreshed the memory of other things: and it was not at all amiss that commonplace sentences, as some may touch divers matters, should be wrote under as many titles. He used to say that the advantage of his commonplace was not, as a parson's

* The correctness and good sense of these observations have been acknowledged by a late writer, who has availed himself of the hints here thrown out in the arrangement of his valuable and useful volumes.—*(See Starkie's Treatise on Evidence,* vol. i. p. 13, *note.)*

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concordance, to help him to cases, but, when he remembered he had read of a case, to help him to find it; and then his little note, there, brought into his mind the agitation of the matter at large in the book; and, for this reason, the commonplace book is of little use to any but to him that made it. For the law is inculcated by reading the long arguments to be found in the books, where reasons are given *pro* and *con*, and not by any extracts, however curiously made. And the great art of commonplacing lying in the judicious, but very contracted, note of the matter, a stranger may pass it by, and not know whether it concerns his inquiry or not.

Mr. Attorney General Palmer's favour.

His admission into the conversation of Mr. Attorney-General Palmer (whereof the happy consequences are noted afterwards) proved of great use to him in the direction of his reading. For Mr. Attorney (whose good nature and affability was such, that a young gentleman might demand any thing of him that tended to the advancement of his studies; and he would answer fully and friendly to it) was a very great book lawyer, and yet never made any commonplace; which is a rare instance, and a sign of a great and distinct memory: but yet not so great as some have had, who have been so full of titles of books and folios that their understanding was kept truly under, and they knew nothing else. For this reason old

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Serjeant Waller was called Index; and people went for his opinion, only to bring away a list of quotations to assist other counsel that understood better. I doubt not but his lordship was encouraged by Mr. Attorney to commonplace so much as he did, whereof the want might be sensible to himself that had not done so, but, too late perhaps, wished he had done it. And the course and method of study, which his lordship used and recommended to his friends, was derived from the same fountain. And of that, as far as I have observed from his lordship's discourse, was to use a variety, and not to plod on in the same tract too long.

Choice of books.

There are of law-books institutions of various sorts, and reports of cases (now) almost innumerable*: the latter bear most the controversial law, and are read as authority such as may be quoted: and I may say the gross of law lecture lies in them. But to spend weeks and months wholly in them, is like horses in a string before a loaden waggon. They are indeed a careful sort of reading, and chiefly require commonplacing, and that makes the work go on slowly. His lordship therefore used to intermix some institutionary reading with them, as, after a fulness of the reports in a

* When North wrote, the number of reports certainly did not amount to fifty volumes; at present they are upwards of four hundred.

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morning, about noon to take a repast in Stamford, Crompton, or the Lord Coke's Pleas of the Crown, and Jurisdiction of Courts, Manwood of the Forest Law, Fitzherbert's *Natura Brevium*; and also to look over some of the antiquarian books, as Britton, Bracton, Fleta, Fortescue, Hengham, the old tenures, *narrationes novæ*, the old *natura brevium*, and the diversity of courts. These, at times, for change and refreshment, being books all fit to be known. And those, that, as to authority, are obsoleted, go rounder off-hand, because they require little commonplacing, and that only as to matter very singular and remarkable, and such as the student fancies he shall desire afterwards to recover. And, besides all this, the day afforded him room for a little history, especially of England, modern books, and controversy in print. But now, as to the English history, I may add a modern improvement, viz. the two volumes of Dr. Brady's are added to the store, and compiled so religiously upon the very text, letters and syllables of the authorities, especially those upon record, that the work may justly pass for an antiquarian law-book. In this manner he ordered his own studies, but with excursions into humanity and arts, beyond what may be suitable to the genius of every young student in the law.

Employment of discourse.

And he was most sensible of the benefit of discourse, which I mentioned before; for I have

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observed him often say that, after his day's reading (as in London if he had the opportunity) at his night's congress with his friends, either at commons or over a chop, whatever the subject was, he made it the subject of his discourse in the company; "for," said he, "I read many things which I am sensible I forgot, but I found withal that, if I had once talked over what I had read, I never forgot that." This agrees with a direction to a student, said to have come from the Earl of Nottingham, "that he should study all the morning, and talk all the afternoon;" because a ready speech (if it be not nature's gift) is acquirable only by practice, and is very necessary for a bar practiser. I remember that, after the fire of the Temple,* it was considered whether the old cloister walks

* The brick buildings in the Temple are said to have put a stop to the fire of London in that quarter, though many of them were consumed, and the conflagration reached the church. "When the fire came where the lawyers had houses, as they had in many places, especially in Serjeant's Inn, in Fleet Street, with that part of the Inner Temple that was next it and White Friars, there was scarce a man to whom those lodgings appertained who was in town, so that whatsoever was there, their money, books, and papers, besides the evidences of many men's estates deposited in their hands, were all burned or lost, to a very great value."—"Some gentlemen of the Inner Temple would not endeavour to preserve the goods that were in the lodgings of absent persons, because, they said, it was against the law to break up any man's chamber."—*(Clarendon's Life, p. 347.)*

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should be rebuilt, or rather improved into chambers; which latter had been for the benefit of the Middle Temple. But in regard it could not be done without the consent of the Inner house, the masters of the Middle house waited upon the then Mr. Attorney Finch, to desire the concurrence of his society, upon a proposition of some benefit to be thrown in on that side. But Mr. Attorney would by no means give way to it, and reproved the Middle Templars very wittily and eloquently upon the subject of students walking in evenings there, and putting cases, "which," he said, "was done in his time, as mean and low as the buildings were then, however it comes," said he, "that such a benefit to students is now made so little account of." And thereupon the cloisters, by the order and disposition of Sir Christopher Wren, were built as they now stand. And, agreeable to this, Serjeant Maynard, the best old book-lawyer of his time, used to say that the law was "*ars bablativa*," which humoursomely enough declares the advantage that discoursing brings to the students of the law. And certainly, above all things, the art of prompt speaking is to be cultivated, as far as may be, according to the aptest rules of oratory, because it wonderfully sets off a bar-practiser. And many by that very talent uncultivated, and owing to pure nature, have succeeded beyond others much more learned. He had such a relish of the

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old year-books, that he carried one in his coach to divert his time in travel, and said he chose it before any comedy. A true notion of the use of any thing, however out of the road of common approbation, will administer such a superlative taste.

Use of the year-books.

I do not know that his lordship had read over, in course, all the year-books; but I verily believe he had dispatched the greatest part, and that he began with the book termed Hen. VII. which hath some years in the antecedent reigns. That book he used to say was the most useful, or rather necessary for a student to take early into his hand, and go through with, because he had observed much of the common law, which had fluctuated before, received a settlement in that time, and from thence, as from a copious fountain, it hath been derived, through other authors, to us, and now is in the state of common erudition, or maxims of the law. He thought a lawyer could not be well grounded without a knowledge of these ancient reports: for they were compiled by men solemnly authorised, and not as now, when every ordinary practiser (to say nothing of the late judges; and even their reports have been most taken when they were practisers) publisheth his reports as he pleaseth; and the bookseller procuring an imprimatur, there is no more to be said. And thus the shelves are loaded with reports;

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all which to read, much more to commonplace, is not only labour, but hardly possible to be done. And how erroneous and contradictory, not only to other books, and even in the same cases, but also to themselves, in many instances, are most of them! And what student or lawyer ever pretended (ingenuously) to know what was in them all? Or what question can happen that may not be very plausibly argued *pro* and *con* out of them? Or what arguers, on either side, can now want a case in point (as they value themselves) to conclude with?

Ancient method of pleading.

Thus it is become almost necessary to make a pandect of law, by establishing the authority of single points that are clear, suppressing all the rest; and thereby purge out all inconsistencies, contradictions, and dubitations; which being once done, the law learning may have more credit, and not be called soft wax. But, to return to the year-books, it is obvious what deference ought to be had to them, more than to the modern reports; for, passing by the very short and material rendering the sense of the pleaders and of the court, it must be observed that the whole cause, as well the special pleadings as the debates of the law thereupon, was transacted orally at the bar, and the prothonotaries, *ex officio*, afterwards made up the records in Latin. And the Court often condescended to discourse with the Serjeants about the discretion of their

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pleas, and the consequences, with respect to their clients. And the Court did all they could to prevent errors and oversights. And reason good; for else their records must go up to the King's Bench to be canvassed for error, which they did not desire should be. And these transactions, faithfully reported, was anciently a code of the common law, which the courts deferred very much to, and the practisers had by heart. But, now, the pleadings are all delated in paper, and so pass the offices, and the Court knows nothing of much the greater part of the business that passeth through it: and when causes, which they call real, come on, and require counting, and pleading at the bar, it is done for form, and unintelligibly; and, whatever the Serjeant mumbles, it is the paper book that is the text: and the Court as little meddles with, as minds, what is done of that sort at the bar; but the questions that arise are considered upon the paper book. All the rest of the business of the court is wrangling about process and amendments, whereof the latter had been mostly prevented, if the Court (as formerly) had considered the first acts of the cause at the bar, when offered by the Serjeants. And this way also the skill of pleading lies not in a student's notice, for him to gather up together with the law part of the case; but he must read over records and entries, a discipline that would split a

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brisk gentleman, by making a jade of his patience. And really forms are better understood and learned by writing than by reading; for that exercise allows time: which consideration hath made clerkship so recommendable to beginners, that most enter the profession of the law that way. It was not moroseness, but reason, that inclined his lordship to deal so much as he did with the year-books; and however, at present, that sort of reading is obsolete and despised, I guess there will not be found a truly learned, judicious, common lawyer without it.

Attendance on the courts.

After a good foundation out of books, his lordship, together with his farther studies, joined an attendance on the courts of justice. For an observation of the practice, gave a great life and spirit to what had been gained by reading. His design, with the community of his profession, was to enter his claim to business at the King's Bench bar, which inclined him to make his preparatory attendance there; but yet he thought fit, as he had been also advised, to attend, as a student, most at the Common Pleas: For there all suits are drawn forth upon the ancient and genuine process of the common law; and, as the Lord Nottingham, in one of his speeches, expresseth, the law is there at home. The time of that court is not taken up with factious contentions, as at the King's Bench, where more news than law is stirring. And his

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lordship, wherever he was in the way of learning any thing, never failed to have his note-book, pen and ink ready: and in that he wrote as a reporter, and afterwards, generally that very day, he posted his gatherings into a fair book; for then he could supply, out of his memory, what was imperfectly taken, and recover things that had not been noted, and dispose all into some tolerable order: for a young reporter's note book is so disorderly wrote, or rather scratched, that none but himself, nor he, after a few days, can make any thing of it.

Reports of cases and law French.

I do not find that he had opinion enough of his early reports, taken while he was a student, to preserve them either fair or foul; for none such are come to my hand. But just upon his coming to the bar, he attended at the Common Pleas whilst Hales was a judge there. And some cases are found at the beginning of his reports, taken there. And I perceive by that book, that one year's reports to Hil. 1657–8, are of the Common Pleas, and from thence they run all as of the King's Bench. By this time he found his strength at that exercise, and began to be very careful of his reports. He was also an attendant (as well as exerciser) at the ordinary moots in the Middle Temple and at New Inn; whereof the former is the superior, and governs the exercises; and took notes. In those days the moots were carefully

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performed, and it is hard to give a good reason (bad ones are prompt enough) why they are not so now. And he contrived to stay in London to be present at famous pleadings, as particularly that of Sir Heneage Finch, and some others. The ready use of the law French came easily to him, because he well understood the vernacular; and he had acquired such a dexterity in writing it with the ordinary abbreviations, that he seldom wrote hastily in any other dialect: for, to say truth, barbarous as it is thought to be, it is concise, aptly abbreviated, and significative. And I believe his aptness, when in haste, or writing to himself only, to write in law French, proceeded from his long use and practice of noting at the bar; which had created in him both an ease and a dexterity in it.* When he had time and place to write at his ease, he usually wrote English, and accordingly drew up his reports.

Applied to court-keeping.

His lordship, long before he was called to the bar, undertook the practice of court-keeping. His grandfather thought he preferred him mainly, when he made him steward of his courts. And the young lawyer procured of other neighbours and relations, to have the charge of their manors; and so made the employment considerable to him. He did not, as many others of late, take a share of

* Until nearly the Revolution, the law reports were taken down, and published in French.

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the profits, and make some attorney a kind of substitute to do all the business; but kept all his courts himself, and wrote all his court rolls, and made out his copies with his own hands; for he pretended to no clerk then. His grandfather had a venerable old steward, careful by nature, and faithful to his lord, employing all his thoughts and time to manage for supply of his house, and upholding his rents: in short, one of a race of human kind, heretofore frequent, but now utterly extinct; and there is scarce any of the breed left, that is, affectionate as well as faithful, and diligent for love rather than for self-interest. This old gentleman, with his boot-hose and beard, used to accompany his young master to his court-keeping; and observing him reason the country people out of their pence for essoins, &c. he commended him, saying, "if he could be contented to be a great while getting a little, he would be a little while getting a great deal," wherein he was no false prophet. I have heard his lordship say, "he thought this court-keeping business" (which he used to recommend to others) "did him a great deal of service; for it showed him the humours of the country people, and accustomed him to talk readily with them, and to meet with their subtilties." They seldom came forward without some formed stratagem to be too hard for Mr. Steward. Some would insist to know their fine, which he would

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not tell till they were admitted, and then he insisted for his fees; no, they would know the fine, and some cunning fellow would jog and advise them to pay the fees, and not dispute that. And abundance more of their contrivances he used to speak of.

He was most put to it in cases of infancy, and uses declared in deeds that did not appear. As for the former, if none came for the infant to be admitted, he seized, not as for a forfeiture, but *quousque*, &c. and made a warrant to the bailiff, *quod respondeat domino de proficuis:* which did not, as he said, make the lord accountable, who in that respect had a prerogative, as, upon a reversal of an outlawry, no money goes out of the king's coffers; but if any friend would pay the fine, he admitted the infant, and him guardian. As to latent uses, which often happen in wills (and sometimes referring to deeds of settlement,) for long terms of years, he would not admit at all, and no action lay because he had the lord's order: For though he might fine to the value, it did not answer, because at that rate, men might enfranchise the copyhold, in spite of the lord's teeth. He hath said that the greatest trouble he had in those affairs, was to satisfy some greedy lords, or rather ladies of manors, in setting the fines, and in being, in some measure, an executioner of their cruelty upon poor men. And in

Copyhold and in fancy.

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very good earnest, it is a miserable thing to observe how sharpers, that now are commonly court-keepers pinch the poor copyholders in their fees. Small tenements and pieces of land, that have been men's inheritances for divers generations, to say nothing of the fines, are devoured by fees. So that, if it were only to relieve the poorest of the land owners of the nation from such extortions and oppressions, without more, there is reason enough to abolish the tenure. It was somewhat unequal, when the Parliament took away the royal tenures *in capite*, that the lesser tenures of the gentry were left exposed to as grievous abuses as the former. The state of that matter seems now at the worst, for copyhold tenures continually waste, and cannot be renewed or increased, so that most manors are more than half lost. Either abolish all base tenures, or let gentlemen enlarge them as they please; and that perhaps may tend to some repopulation, which is more needed than any means of extortion.

Managed some law-suits.

His lordship, while he was a student, and during his incapacity to practise above-board, was contented to underpull, as they call it, and managed divers suits for his country friends and relations, "which," he said, "was useful to him in letting him into a knowledge of the offices, and the methods used there;" for he was always in person present at every turn in whatever business he un-

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dertook. In a cause for his father against Sir John Lawrence, he recovered 300*l.* and brought in a very moderate bill of charges; which pleased his father, who expected a great deal more. He made use of Mr. Baker, a solicitor in chancery, who for his singular integrity was famous, and on this occasion ought to be remembered with honour. His lordship had a veneration for this Mr. Baker as long as he lived. When his lordship paid his bill, the virtuous solicitor laid by a sum (according to an usual rate) for him, saying that it was their way, and they were allowed at the offices somewhat for encouragement to them that brought business. By this we see what country and other attornies get by chancery suits. But his lordship would not touch a penny, but turned it back upon the good man's hands.

The like for his grandfather, and his vindication.

He also managed a suit for his grandfather with the like success, and in the close of that, somewhat comical happening, I am provoked to relate it. And indeed what have we to remember of a young man, but things that really fell out, and in his circumstances, not inconsiderable? After this suit ended, his lordship sent to his grandfather the bitter pill, the solicitor's bill of costs, and the old man sent him the money, and he paid it. And afterwards the noble client reviewed his bill over and over, for however moderately and husbandly the cause was managed, he

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thought the sum total a great deal too much for the lawyers. And among other items, he observed great numbers of sheets in the bill, and so for the answer and depositions, besides many breviates, orders, &c. as belong to a chancery case. And he had heard in the country of such bills whereof no entry at all was in the offices (no miracle in our days) and then knowing Frank North to be a nimble spark, he concluded that these items were suppositions, and that he had swallowed the money, and after the way of wilful people, upon a bare suspicion concluding a certainty, he deliberated how to catch him (as it were) in the fact, and then to expose him to perpetual shame and ruin. And pursuant to this pious resolution, he writes to Mr. Langhorn of the Temple,* (who afterwards suffered in Oates's plot) to cause searches to be made, and to send him word if any such proceedings, of which he gave him the account, were entered in the offices. Whether it was by guess, perfunctory searches, or the person employed took the money and cheated the offices, I know not; but it is certain that Langhorn returned answer, " that no such proceedings

* " He was in all respects," says Burnet, " a very extraordinary man. He was learned and honest in his profession, but was out of measure bigoted in his religion. He died with great constancy." (*Own Times*, vol. ii. p. 810. *See his Trial Howel's State Trials*, vol. vii. p. 418.)

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were to be found upon the file in any of the offices where they should have been entered, or any copies of such made out." This was nuts to the old lord, who thought he had outwitted Frank: and, while he was in London, used to talk very mysteriously of him; as that "Frank had wit enough, but honesty, honesty, was a rare thing." The meaning of all which, the family about him did not in the least apprehend. When Frank was about to come down, the old man wrote to him to bring with him the papers that belonged to his case. And so it rested till the young man arrived; and then, for about a week, all was well; in which time, all the news and London matters were talked over and dispatched. And then, after dinner, the old lord turned to Frank, and "Where are the papers?" said he. The other answered, "he would go fetch them." This did not work well, but still the event was expected; and after a little pause, Frank returned with a bale of papers under his arm, and set it down upon the table, standing by it in expectation of what would be said to him. The old lord, being utterly frustrated in his expectations, turned about the room quicker than ordinary; and as he mended his pace, Frank was in great doubt what was to become of him. At last he ventured to say, "My lord, what is your pleasure I shall do with these papers?" The old lord

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stopped short, and turning said, " wipe your —— with them." That answer was not at all expected; and, after a little pause, he asked again " what he should do with them?" And his lordship stopped short again, and, twice as loud as before, said he, " Why, don't I tell ye? wipe your —— with them." And there ended all his concern about those papers; and Frank was restored to favour.

This historiette manifests the little safety there is in false dealing, as much as the loftier accounts of hazards, or decadences of great ministers of the court: for if this young lawyer, for want of experience, or (we must say) of honesty, had dabbled in a very common practice, of shamming a false bill, he had been caught and undone. And on the other side, being faithful and just, with the testimony of things to disculpate him, what a triumph had he over a severe old man, that had rejoiced to have exposed him! And how strongly is the consequence of a very trite maxim (in mouths, but rare in hearts) verified by this instance, that honesty is the best policy! And there is this farther lesson in it, that young men, in making their fortunes, must depend, and are obliged to bear with humours and injustices from those they depend on: And, in that school of the world, they learn to be reasonable and just themselves; for few men ever value reason and justice,

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till they have sharply felt, and so have been made sensible of the contrary.

Concerned in a family revolution to his loss.

There was an emergence in the family of his lordship's grandfather, which, as to the economy of it, was of the last importance: and in regard it drew in his lordship to be the chief actor in the scene, and, as things then stood, a bold undertaker, and shows him so early thought fit to be employed and intrusted in nice performances, I shall give a relation of it. The old lord, besides his reverend steward mentioned before, had two other servants of a French race, who were his favourites. One was called Bertram St. Genes, that had scarce English enough to make himself understood; but a gross sycophant, and (if honest) most unfit for business. He had married the other's sister, and had children, for whom a habitation was prepared near hand. He was a very little fellow, and served as a *valet de chambre*, and had thereby means to insinuate to the prejudice of the rest of the family. But the other, Monsieur le Blanc, in English (as he was called) White, was a brisk, gay spark, that had been bred at court (such as it was) a page to Sir John Danvers, one of the king's judges. He could dance, sing, and play very neatly on the violin, was good company, and served as a gentleman waiter, and was most acceptable in his musical capacity. It fell out, very unluckily for the family, that the old

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lord quarrelled with his good steward; and, as his humour was to be very tyrannical and vindictive, so he had taken a resolution never to be in the wrong. And he cared not whom he persecuted, nor how unjustly or unreasonably, if it tended, as he thought, to justify any thing he had done: and the more mistaken he found himself, the more violent was he in his proceedings; as if, by that means, he was to set himself right. These are the dregs of an old courtier. But surely he tormented the poor old man by revilings, and law-suits, and at last broke his heart; and he died. But, upon the first turning him off, there was a place fallen, no less than the premier minister in that family; and the question came, who should succeed him? Sir Dudley North, his lordship's father, was really afflicted at the hard usage of the old steward; and more at the ruin he foresaw would follow, if that rascally monsieur, who was worse than good for nothing, was made steward. There never was an instance of filial duty to a parent more eminent than that of Sir Dudley North to his father. He lived to a good old age before the barony descended upon him, and had stood as an eldest son of a peer, at the state in the House of Lords, at sixty-three. He never would put on his hat, or sit down before his father, unless enjoined to do it. So far was he from moving any thing to him that he knew would displease him; and so egregious was

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this dutiful demeanour, that all people took notice of and admired it. And some were so assured to say, that Sir Dudley had his reward in living to see all his own children, who were not a few, male and female, both dutiful to him, and settled prosperously, according to their several pretensions, in the world. But Sir Dudley, dreading the advancement of this Bertram, encouraged his son Frank, who seemed a favourite also, to represent to the old lord the unfitness of that fellow to be his steward; and he accordingly ventured to say, "he hoped his lordship did not intend to make choice of him." "Why so?" said the old lord; "what can you charge Bertram with?" He answered, "that for many years he had the charge of his wine and strong-beer cellar, and never gave his lordship an account of that, or any thing he was intrusted with." This was but too true, and could not be denied. Then the old man rearing himself a little, "Who then," said he, "would you have to be steward?" He answered, Mr. White. And that was worse and worse, because he was a favourite also; and Frank North's designation of him, in that manner, could not fairly be quarrelled with. Whereupon the old lord rose up, and lapping his cloak about, as he used when angry, without saying more, went out, leaving the young man in great suspense, not knowing what was to become of him. The old lord went to his cabinet,

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and took out a codicil he had made to his will, and carried it to his son Dudley; and, "Look here, son," said he, "I had given Frank twenty pounds a year, but he has offended me, and here is his reward;" so threw it into the fire. And, from that time, contrived all the ways he could to defame and ruin him. Sir Dudley repaired his son Frank by a lease of a house in London, and encouraged him by his approval of his fidelity and courage. But the old man still made use of Frank for his diversion; and, teeth outwards, was kind to him: but he must sometimes bear a gird or two upon account of the steward, which, at last, proved to be the Monsieur. But he lived not long enough to do much mischief; for a government, long kept in good order, will not be put out all at once. And, after Frank (at his next term) was gone to London, the old lord made a servant write to him, and at the bottom were these words: *In consilium ne accesseris antequam voceris*; that is, do not offer your advice before it is asked. The reason of which was, that the bitterness of his repentance might not wear off. This was the last transaction, in that family, which much concerned his lordship: and, if these relations are thought of small import, to mend that fault, I can add only, that they concern my subject, and are true: and, from a private family, let the imagination transfer the scene to some royal and imperial court, changing the

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names of persons and offices, and the whole may be seen sprout up into the altitude of state intrigues.

I have so far conducted his lordship, as to be ready for the bar. But before I touch upon that, I shall take some notice of his character, as the same appeared in this first stage of his life.* He was of low stature, but had an amiable, ingenuous aspect, and his conversation was answerable, being ever agreeable to his company. His hair grew to a considerable length, but was hard and stiff, and did not fall as the rest of the family, which made it bush somewhat, and not without a mixture of red and grey. As to his humour, he was free from Character.

* To this admirable picture of a studious young lawyer, the following character of a gallant young nobleman, of the same day, forms no unsuitable companion. It is the portrait of the valiant and accomplished Ossory:—"He is a young man, with a very handsome face, a good head of hair, a pretty big voice, well set, and a good round leg. He pleaseth me exceedingly, being very good-natured, asking many questions, and humouring the answers. He rides the great horse very well; is a good tennis-player, fencer, and dancer. He understands music, and plays on the guitar and the lute; speaks French eloquently, reads Italian fluently; is a good historian, and so well versed in romances, that, if a gallery be full of pictures or hangings, he will tell the story of all that are there described. He shuts up his door at eight o'clock in the evening, and studies till midnight. He is temperate, courteous, and excellent in all his behaviour."—*See the Life of Ormond*, vol. ii. p. 161.

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vanity himself, and hated it in others. His youthful habits were never gay, or topping the mode, like other inns of court gentlemen,* but always plain and clean, and showed somewhat of firmness or solidity beyond his age. His desire was rather not to be seen at all, than to be marked by his dress. In those things, to the extreme was his aim; that is, not to be censured for a careless sloven, rather than to be commended for being well dressed. But, as to his appearing in public, the composition of his temper was extraordinary; for he had wit, learning, and elocution, and knew it, and was not sensible of any notable failings, whereof to accuse himself; and yet was modest even to a weakness. I believe a more shamefaced creature than he was, never came into the world: he could scarce bear the being seen in any public places. I have heard him say, that, when he was a student, and ate in the Temple hall, if he saw any company there, he could not walk in till other company came; behind whom, as he entered, he might be shaded from the view of the

* The orders of the benchers respecting the apparel of the students were formerly very numerous.—*See Dugdale's Orig. Jurid. passim.* Thus, in 26 Eliz. it was ordered, "that no great ruff should be worn; nor any white colour in doublets or hosen; that no gentlemen should walk in the streets in their cloaks, but in gowns; that no hat, or long or curled hair be worn; nor any gowns but such as were of a sad colour."—*Ibid.* p. 191.

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rest. And he used to stand dodging at the screen, till such opportunity arrived; for it was death to him to walk up alone in open view. This native modesty was a good guard against vice, which is not desperately pursued by young men, without a sort of boldness and effrontery in their natures. Therefore ladies, and other fond people, are greatly mistaken, when they desire that boys should have the garb of men, and usurp assurance in the province of shamefacedness. Bashfulness in the one, hath the effect of judgment in the other. And where judgment, as in youth, is commonly wanted, if there be not modesty, what guard has poor nature against the incentives of vice? Therefore it is an happy disposition; for when bashfulness wears off, judgment comes on: and, by judgment, I mean a real experience of things, that enables a man to choose for himself, and in so doing, to determine wisely.

His loose entertainments, in this stage, were, as usual with gentlemen cadets of noble families in the country, sporting on horseback; for which there was opportunity enough at his grandfather's house, where was a very large and well-stocked deer park; and, at least twice a week in the season, there was killing of deer. The method then was for the keeper, with a large cross bow and arrow, to wound the deer, and two or three disciplined park hounds pursued till he dropped. His diversions.

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There was most of the country sports used there for diverting a large family, as setting, coursing, bowling; and he was in it all; and, within doors, back-gammon and cards with his fraternity and others: wherein his parts did not fail him, for he was an expert gamester. He used to please himself with raillery, as he found any that, by minority of age, or majority of folly and self-conceit, were exposed to be so practised upon. I could give instances enough of this sort, and not unpleasant, if such trifles were to be indulged in a design such as mine is. His most solemn entertainment was music, in which he was not only master, but doctor. This for the country; where, to make good his exhibition, he was contented (though, in truth, forced) to pass the greater part of his time. But, in town, he had his select of friends and acquaintance; and with them he passed his time merrily and profitably, for he was as brisk at every diversion as the best. Even after his purse flowed sufficiently, a petit supper and a bottle always pleased him. But he fell into no course of excess or vice; and whenever he was a little overtaken, it was a warning to him to take better care afterwards: and, against women, his modesty was an effectual guard; though he was as much inclined as any man, which made him desirous to marry. And that made his continence a positive virtue; for who may not be good, that is not inclined to

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evil? The virtue of goodness is where a contrary inclination is strove with, and conquered. He was in town, a noted hunter of music meetings; and very often, the fancy prevailed to go about town and see trades work; which is a very diverting and instructive entertainment. There was not any thing extraordinary which he did not, if he might, visit, for his information as well as diversion; as engines, shows, lectures, and even so low as to hear Hugh Peters preach. I have heard him say, that when Hugh had made his close, he told his congregation that a gifted brother had a desire to hold forth; and then up rose Sir Peter Pet: and he, though a mere layman, prayed and preached his turn out. That gentleman lived to be an old man in town; and most people knew him, that little thought he had been once a preacher. The old Lord and Lady Anglesey (while she lived) supported him; and, at the revolution, Sir Peter and his lordship published books, wherein one of the chief performances lay in the commending each other: which notable band of friendship had its root in the time of the Irish rebellion.

Called to the bar without favour.

Now, being to leave his lordship in this stage, invested with a title, and beginning to practise the law,* I must observe his preparatives. He

* It appears from the books of the Middle Temple, that the Lord Keeper was called to the bar, on the 28th June, 1661.

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was not called to the bar *ex gratiâ*, or for favour, as when the person is not of standing, or hath not performed his exercises: but being early admitted, his time was fully run out, and he performed all his moots* both in the inns of chancery (for it is the custom for the inns of court to send down readers, to moot, in the inns dependent on them) and also in the hall; and not perfunctorily, as of latter times the use is, by way of *opus operatum*, as for tale and not for weight, but in well-studied arguments, wherein he followed the example, it may be the instruction, of his friend and patron Sir Jeoffry Palmer, whose moots are excellent readings, as the original manuscripts, resting in my custody, may show: and I have also some like testimonies of his lordship's endeavours that same way. I have heard him say that it is prudent not over soon to launch into practice;† for it is ob-

* The mode of performing the moots is thus described by Dugdale. "The pleadings are first recited by the students, then the case heard and argued by the barristers; and lastly by the reader elect and benchers, who all three argue in English; but the pleadings are recited, and the case argued by the utter barristers, in law French. The moot being ended, all parties return to the cupboard, where the mootmen present the benchers with a cup of beer and a slice of bread." (*Orig. Jurid.* p. 209.) The custom of *mooting* has been discontinued for upwards of a century.

† By an order of the lord chancellor and the twelve judges, dated 18th June, 1664, no one was to be admitted to the bar, unless he had kept exercises in some inn of court

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served that no person increaseth his store of law after he is called to the bar and enters upon practice. 'His judgment and knowledge of forms may increase, but his book learning is at a stay, because business, either found, or pursued, fills his head; so that even reading doth him little good. Wherefore it is said, that he who is not a good lawyer before he comes to the bar, will never be a good one after it. After he was called to the bar (which, as they term it, was *ex debito justitiæ*) he did not, as many less qualified have done, bustle about town, and obtrude themselves upon attornies, and perhaps bargain for business; but lay quiet: and the chief alteration in his way of appearing, was this. Instead of his being posted within the court, as a student to take notes, he did the same standing at the bar; and if chance, or a friend, brought a motion, of course it was welcome.

Exhibition of sixty pounds per ann. reduced to fifty.

The exhibition allowed his lordship by his father, was, at first, sixty pounds per annum:* But

for *seven* years; and after being called, he was not to practise publicly in court, until he had been called three years: thus making the term of probation ten years. "For that the over early and hasty practice of utter barristers doth make them the less grounded and sufficient, whereby the law may be disgraced, and the client prejudiced." (*Dugdale's Orig. Jurid.* 323.)

* The sum allowed Jeffries when a student was still less, being 40*l.* and 10*l.* for clothes. (*Lives of the Chancellors*, vol. i. p. 179.)

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the family being hard pinched, for supplies, towards educating and disposing many younger children, and his parents observing him to pick up some pence by court-keeping, besides an allowance of twenty pounds per annum from his grandfather, and a little by practice, they thought fit to reduce him to fifty pounds. This sat hard upon his spirits, and produced divers notable-penned letters, post after post, complaining upon all the topics of an hard case, that could be thought of. He never pleaded so earnestly for the best fee that ever he had. At length there comes a letter from his father, which he opened with precipitous haste, in hopes of a favourable answer; and there he found,—"Frank, I suppose by this time, having vented all your discontent, you are satisfied with what I have done, &c." There sunk all his hopes upon that point. But, to do right to his good father, he paid him that fifty pounds a year, as long as he lived, saying he would not discourage industry by rewarding it, when successful, with loss.

Assisted in carrying a cause for one Stutvile.

One of his lordship's first clients, and for whom he had a great respect, because he had the office of keeping his courts early, was Mr. Stutvile of Dalham near Newmarket. This gentleman was a compound of irregularity, and one of his feats had like to have cost him dear; for he was taken napping with the wife of one Robinson: on which, death, without honourable satisfaction, was to

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follow. The giving the law satisfaction, that is money, was the milder dose of the two; and that must be a peremptory bond for the payment of fifteen hundred pounds, on which condition the bond was to be void. This bond was made by a scrivener, and very well; though at the close of the condition, the words "else to remain in full force" were not added. After the sealing, Mr. Robinson brought his bond to the scrivener, and swore to be the death of him if he did not mend it, by adding those words. "Here is a condition," said he, "to make the bond void, but none to make it good." "It is good," said the scrivener, "if there be no words to avoid it; and I may spoil, but cannot mend the bond." That was all one, he must do it, and did it. And then the scrivener honestly told the obliger, what he had been forced to; so that was laid up for a plea to avoid the bond. But Mr. Robinson, advising with counsel about suing, was told his bond was utterly voided by his adding words to the condition after sealing. Then he was advised not to put it to suit till the scrivener was dead. His lordship, and other of Mr. Stutvile's counsel, perceiving that, contrived to bring the point soon to a trial, by preferring an information, in the King's Bench, against Robinson for forgery; and if, upon the scrivener's testimony, he should be convict, that record would remain against the bond for ever. Robinson, finding him-

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self caught, and no remedy, complied by delivering up the bond, and so got rid of the information. But this unexpected success made such an impression on Stutvile's wild brains, that he thought there could be no law-suit desperate; and, from that time, he never did any man justice, but ruined himself by perverse law-suits, and at last died in a gaol. Perhaps, if he had paid the fifteen hundred pounds, his punishment had been less.

Provides a chamber for practice, and books.

After his lordship was called to the bar, the first thing he took care for, was a practising chamber, as they call those which are not above two pair of stairs high. The ground chamber is not so well esteemed as one pair of stairs, but yet better than two; and the price is accordingly. He sold his little student's chamber, and also the lease of a house his father gave him, which raised near three hundred pounds; and, with that sum, he bought his life in a corner chamber, one pair of stairs in Elm Court. A dismal hole for the price; for it was not only dark next the court, but, on the back side, a high building of the Inner Temple stood within five or six yards of his windows: But yet, some more room, and a large study being gained, he thought himself greatly preferred: and he soon filled his shelves with all the useful books of the law which he wanted. His mother had made a collection of legacies and gifts to him, when very young; and, when he first went to the inns of court, she gave him an exact account, to the time,

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cast up with the interest, and paid him the sum total at once; and, with that stock, he made out a good student's library.

Assisted a brother at parting.

About this time, his brother Dudley, who had lived in London divers years, in the several states of preparation for trading as a Turkey merchant, was sent abroad, by his master, in a long round-about voyage, by Archangel in Russia, to Smyrna; an account of which voyage will be found in the relation of that gentleman's life. He had, at his going out, from his father, but a single hundred pound stock to trade with; and his lordship augmented it by lending him two hundred pounds, which was all the wealth he could value himself upon, beforehand; and of that, by the voyage and mortality, he ran no small risk. This was a melancholy parting; for they had been bred, and much conversant together, and, fraternal relation apart, were joined in the strictest personal friendship: and now, when they were arrived to a state of enjoying each other in perfection, worldly engagements obliged them to separate. But this kindness of his lordship's was rewarded, by living to see his brother come home wealthy, and, soon after, flourishing, not only in the city but also at court in the king's service.

Corresponded, and about one Broadgate.

These two brothers and friends held a continual correspondence by letters; but more frequent and expatiated at first than afterwards, when business increased so much upon both as abated the ar-

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dour of writing often and long. It fell out that when Mr. Dudley North first arrived at Smyrna, or soon after, the factory was served by one Broadgate as their chaplain, sent out, for that end, by the Turkey Company. He had been a fellow of St. John's college in Cambridge, and preferred to a living in Essex, where the gentleman, there residing, was so offended at his unfitness and ill carriage, that, to get rid of him, he made an interest, and palmed him upon the Turkey Company, and so he came to be sent to Smyrna. The young factors are commonly generous fellows, and stand much upon honour (in those parts at least, whatever they prove when they come home): they revere and gratify their pappas, as they call him, if he behave himself well, but, if otherwise, they lead him a life (as they say) like a dog. This person was a presbyterian bigot, and not without a flaw in his cranium. And he made account that he was to preside over boys, and to teach them religion: and, to that end, had framed a catechism, and got it printed; and a bale of these, stitched in blue paper, went along with him, and were delivered out to all the factory; and he took particular notice of Mr. Dudley North, telling him that his brother Francis was his fellow collegiate and intimate friend, and, for his sake, he would be very kind to him. But the parson was guilty of so many barbarous impertinences (as

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may be found particularised in that gentleman's life) that the young factor wrote to his brother Francis, telling the various extravagances and follies committed by him there, and desiring to have an account of him and his character. His lordship soon wrote, and informed him that Broadgate was the laughing-stock of the college; and so made good payment in stories of him here. This letter was communicated about in the factory, and the parson understood how he came to be so derided as he was. Upon that, he goes to Mr. Dudley North, and desired to have his brother's letter, that he might sue him in England for taking away his reputation. The merchant would not do that; but told the parson, that, if he had it, it would do him no service, for he would prove that he had no reputation before the letter came, so could lose none by that: and then, turning over his copy-book of letters, he read to him his leading letter to his brother, in which were all the stories and terms of derision as could be, to make him contemptible. This was plain enough to the parson; and it was all he got by his attempt. This was one of those notable men that obliged the little fellow-commoner of St. John's college with opportunities of making ridiculous remarks. As, for instance, that he spent his time watching at his window; and if he saw strangers in the court, then he made his clock strike, that it

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might be plain to them that a clock struck in his chamber. And, if many scholars were in the court, he went down on purpose to make them cap him. And the book, that lay on his table, had broad pieces in the leaves, which visitants, opening, might discover; and other such kind of vain follies, whereof the early observation might possibly help to make his lordship nauseate all kind of vanity, as he did for ever after.

Endearment with his brother Dr. John North.

The loss of this good brother was, in some measure, repaired by the frequent enjoyment of another, John North, who had also, for some years, been bred with him; but, being settled in another way of study in the university of Cambridge, they came not often together, but at friends houses in times of recess, and, sometimes, by recourse of the scholar to London. And their endearments increased continually, ending in a perfect and untainted love and friendship to each other: of which more may be said in the life of this brother John, afterwards Dr. North.

Solicitous about his health.

About this time his lordship, notwithstanding his being called to the bar, followed his studies very close, and attended the courts at Westminster, and reported diligently; and if there were any famed cause to be argued and determined, in what court soever it was, he would be a present auditor and reporter of it; especially before Hales while he sat in the Common Pleas.

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And, obliging himself to that spider-kind of life which a young lawyer leads in his chamber, he began to contract certain splenetic reflections touching his health, always thinking some fever, consumption, or other disease, creeping upon him, and inclined much to physic for prevention. Once he repaired to Dr. Bokenham, of Bury, with a list of complaints. But the doctor could find no ground for any of them, nor to suspect him ill; but laughed at him, and sent him away. This correction assuaged the spleen a little; but he was not cured till a deluge of business drowned all such kind of thoughts. But he had one symptom which often alarmed him, which was much spitting; but, in truth, it was a benefit of nature; for it was plain that a noxious phlegm discharged itself that way; for while his spitting continued, he was always well, but, if that stopped, he was as surely ill. He was all his life solicitous about his health, and fearful of getting cold, for which end he went thick clad, and wore a broad stomacher on his breast; and, commonly, a little leather cap, which sort was then called skullcaps; but those devolved to other uses I shall mention afterwards.

Great increase of business.

Soon after his being called to the bar, he began to feel himself in business, and, as a fresh young man of good character, had the favour of divers persons, that out of a good will went to him, and

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some near relations. He was once asked if he took fees of such. "Yes," said he; "they come to do me a kindness; and what kindness have I if I refuse their money?" The attornies also were very civil to him, and brought him motions, which gave him opportunity of showing himself; and these obligations he remembered to the last, and returned them when it came to his turn to oblige with any just favour he could show: and he never failed to do it. His acquaintance was so diffused through the whole relation and dependence of Sir Jeoffry Palmer, that he had them all entirely, and indeed, as well before as after he was called to the bar, he lived as one almost ingrafted in the family; and, not only his interest was greatly derived from thence, but his conversation was almost confined to them; and they were all so easy and friendly to each other, that they lived and conversed as if they had been literally of a family. His wheel of good fortune turned upon the favour of Mr. Attorney Palmer, whereon the crisis of his preferments in the law moved. But before I come to set forth the history of that, and enlarge farther upon his lordship's better fortunes, I will dispatch one or two of his most sensible griefs.

Grieved at the loss of his sister, and her character.

The first was the loss of a sister, named Mary, who was married to Sir William Spring, in Suffolk, and died not long after the birth of her first child, and the child not long after her. He had a parti-

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cular engagement of friendship and brotherly love to that lady, who, besides the advantage of her person, had a superior wit, prodigious memory, and was most agreeable in conversation. I do just remember so much of her (for I was very young when she married) that, for hours and hours together, she diverted her sisters and all the female society at work together (as the use of that family was) with rehearsing by heart prolix romances, with the substance of speeches and letters, as well as passages; and this with little or no hesitation, but in a continual series of discourse: the very memory of which is to me, at this day, very wonderful. She instituted a sort of order of the wits of her time and acquaintance, whereof the symbol was a sun with a circle touching the rays, and, upon that, in a blue ground, were wrote αυτάρκης in the proper Greek characters, which her father suggested. Divers of these were made in silver and enamel, but, in embroidery, plenty, which were dispersed to those wittified ladies who were willing to come into the order; and for a while they were formally worn, till the foundress fell under the government of another, and then it was left off.

Loss of Mr. Edward Palmer, and great benefit by Mr. Attorney's favour.

Next to this, the loss of his lordship's bosom friend Mr. Edward Palmer, Mr. Attorney Palmer's younger son, afflicted him. I have heard him say he never was so sensible of a passion of

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grief, as upon his death; and, for a long time after, he eased himself often upon the impotence of crying. For, besides the living amity between them, in that moment lost, he was present, embraced, and held him in his arms when he died; than which nothing could more aggravate his sorrow. This friendship began by mess-making in the Temple-hall, and brought his lordship into other beneficial acquaintance, as of the Hydes, then related to the greatest employments in the law: one of that name, whose younger son was of the Middle Temple, had the great seal as lord chancellor, and another was lord chief justice of the King's Bench; and this acquaintance owned his lordship for a relation, and was cultivated by him with all the application he could make. But this Mr. Palmer first brought his lordship to the attorney general's knowledge and familiarity, and the very great benefits to him thereby. For he not only had his direction and assistance, as well as encouragement, in his studies, but was by him, as it were, led by the hand into the highway of preferment. For that great and sudden increase of his lordship's practice, which I mentioned before, may not be entirely ascribed to capacity. It is more than probable that in process of time he had advanced himself by the pure strength of his genius, but not by such large strides as he made in getting money, and loping

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into preferments, as he did, without the aid of friends and good fortune; for circumstances of persons and times were most propitious to his character. And of those happy contingents, the first was this friendship of Sir Jeoffry Palmer, which conduced much to the lustre of his lordship's reputation.

Serviceable to the attorney-general.

And therein the attorney-general did no less serve himself; for he made use of his cousin North (as he most kindly used to style him) in being personated by him in Westminster hall, and otherwise by his consults upon motions of law depending: for, at the latter end of his time, he grew very infirm and weak, and when he could not attend in the court of King's Bench to give accounts and answers to the court in the king's affairs, as belonged to his office, he directed his lordship with instructions to do it for him, and he acquitted himself therein with such decent modesty, as well as neat and concise speaking, as got him no little credit. Mr. Jones at the bar, who had the capital practice of that court, was much disturbed at the advances this young gentleman made so near his territory, and could not forbear flirting at him, as—"Come, Mr. Deputy Attorney, what have you to say now? You are to be of the king's counsel shortly;" and the like; which showed a spirit of ambition and envy, and was an occasion of some inconvenience to his lordship, as

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will be showed elsewhere. I have heard his lordship say, that once, at the desire of the attorney-general, he had consulted books, and gathered together upon a paper, the reasons of law, upon a case he (the attorney) was to argue; and that he used that very paper, and argued almost word for word out of it. And I have such a paper wrote by his lordship, with some notes, of the attorney's hand, in the margin. But his lordship said he never mentioned it to any of his family, but to me only, lest they should think him vain and fictitious.

Argued for the king against Hollis, and made the king's counsel.

Another singular opportunity, by means of the attorney, he had of showing himself; which was the arguing in the House of Lords upon a writ of error for the King against Hollis, &c. The story of the five members in King Charles the First's time is well known, who being prosecuted for the riot committed in the House of Commons, in holding the speaker down in his chair, were convicted. After the restoration, the commons thought that the record of this conviction might be prejudicial to the privilege of that house, and ordered a writ of error to be brought, and Mr. Attorney was to find counsel to argue for the King, against the Lord Hollis, who was one of the five, and first named in the record. Mr. Attorney being an assistant in the House of Lords, could not argue, nor could he prevail upon any of the serjeants, or

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other eminent practisers to do it; for they said it was against the commons of England, and they dare not undertake it. At last the attorney said his cousin North should do it; and accordingly at different times, as his other practice would allow him, he prepared his argument, which was performed at the bar of the house, and (with especial notice taken of his comely youth, and modest, but cogent reasoning) his argument was approved, and although the commons carried the cause, he was immediately thereupon made of the king's counsel, which gave him the privilege of pre-audience, and coming within the bar. This action and its consequence, had the effect of a trumpet to his fame, for the king had no counsel at law then, except serjeants. But I shall beg leave to enlarge a little upon this matter, with some farther circumstances, which I am encouraged to do by a paper I found, in which his lordship had noted his several steps of preferment, with intent, at leisure, to have drawn them into a relation of short history. He had made preparatives, such as these, concerning public matters; but he never had time to pursue them: all or most of which I shall insert in their proper places throughout this work, and annex what occurs to me that may appertain to them. But as to the case before us, his lordship's note is as follows:—

"How king's counsel,—Hollis."

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His lordship's note of this affair.

This case of Hollis, and other the five members, and his lordship's undertaking to argue for the king, was at a time when his hands were full of business, and he was very much straitened in his preparations; and he came up with the greatest reluctance, and nothing but a right reasoned resolution could have conquered his modesty. But that which gave him most assurance was, that he was satisfied he argued on the right side, and that, upon the face of the record, the law was for the king. The information (among other things) was for a violent holding the speaker in the chair, in breach of the peace. Hollis pleaded the privilege of the commons, that all offences committed in the house by the members, were punishable only by the house itself: and the attorney general demurs, and the court of king's bench gave judgment for the king, and this was the (chief) error. His lordship insisted that, 1. This was an offence against the peace, with the aggravations, for it was so admitted by the plea; and 2. That if the house had punished it, and it had been so pleaded, it had been well; but 3. Their not punishing left the offence at large, which ought to be punished somewhere: and the authorities cited, were clear that privilege did not extend to offences against the peace, and that such might be punished out of parliament, and future parliaments could take no notice of

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them. This was the chief point, but there were in the case divers other chicaneries, as would appear in the argument itself, if made public. The Duke of York was pleased to inquire who that young gentleman was, who had argued so well; and Mr. Thomas Gray, who attended as a lord's eldest son, told the duke that he was a younger son of the Lord North, and what hopes he gave of his being a very able lawyer, and what was rare at that time, of loyal principles; and moved his royal highness to prevail with his majesty to encourage him by making him one of his majesty's counsel. And all this was only as the occasion offered, without any suit or contrivance on his lordship's part, to bring it about. His lordship feared that the Lord Keeper Bridgman, who by his place superintends the preferments in the law, might take it ill that his lordship did not move by him; therefore he waited upon him, and gave him an account how it succeeded. And the lord keeper having knowledge of the matter beforehand, acquitted his lordship of all blame towards him, and wishing him much joy, gave him all the encouragement that could have been wished for or expected.

V. chap. pref. vol. 2.

Upon his lordship's being made of the king's counsel, there happened a dispute in his society of the Middle Temple; which ended favourably to him, and augmented his reputation in West-

A dispute with the benchers of the Middle Temple.

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minster-hall. The rulers of the society, called Benchers, refused to call his lordship, after he was king's counsel, up to the bench; alleging that if young men, by favour so preferred, came up straight to the bench, and by their precedence topped the rest of the ancient benchers, it might in time destroy the government of the society. Hereupon his lordship forbore coming into Westminster-hall for some short time, hoping they would be better advised, but they persisting, he waited upon the several chiefs, and with modesty enough acquainted them of the matter, and that, as to himself, he could submit to any thing; but as he had the honour to be his majesty's servant, he thought the slight was upon the king, and he esteemed it his duty to acquaint their lordships with it, and to receive their directions how he ought to behave himself, and that he should act as they were pleased to prescribe. They all wished him to go and mind his business, and leave this matter to them, or to that effect. The very next day in Westminster-hall, when any of the benchers appeared at the courts, they received reprimands from the judges for their insolence, as if a person whom his majesty had thought fit to make one of his counsel extraordinary, was not worthy to come into their company; and so dismissed them unheard, with declaration that until they had done their duty in calling Mr. North to their

V. chap. pref. vol. 2.

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bench, they must not expect to be heard as counsel in his majesty's courts. This was English, and that evening they conformed, and so were reinstated.* It is one of the properties of an aristocracy to hate that any persons should come amongst them but of their own choosing. I have heard that, since the revolution, whereby (as they termed it) they were manumised, they have not called any of the king's counsel extraordinary (who are now become numerous) to the bench; which shows the different walks some matters will take in different times.

Of Sir Jeoffry Palmer, and the conversion of his lady

I have already mentioned his lordship's happy acquaintance with Mr. Edward Palmer, the attorney-general's younger son, which was the rise of all the favour and approbation Mr. Attorney showed him; and that, the rise of his lordship's succeeding course of preferments. And how helpful and assistant he was to the attorney in his declension: and the repute gained thereby, with the emulation of Sir William Jones, that happened thereupon, hath been already set forth in the Examen. I should here have thought it reasonable to have given some account of that worthy person, on whom his lordship's fortunes so much depended: but since I have said so much of him in the Examen, I think there is no need of insist-

* The lord keeper was called to the bench of the Middle Temple on the 5th June, 1668. *(Books of the Society.)*

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ing any farther upon his character here; and therefore shall only relate the following remarkable story. He had married a lady, who was a Roman Catholic, upon terms not to meddle with each other's religion but each to enjoy their several church professions, without any mention to the contrary; and both kept parole religiously; and yet, by dint of his egregious piety and integrity, without any other arguments or eloquence, he converted her to the communion of the church of England; and it fell out thus. One Sunday morning his lady would rise with him, which she had used not to do, and he told her she need not, for her church began later, and asked, "why she would rise so soon?" She answered, "to go to church with him;" and so she did, and continued so doing all the rest of her life. And to some of her family she declared, that she found his knowledge so great, and his course of life so truly pious and virtuous, that she concluded that he must needs be in the right, and that she would submit her judgment to his, rather than to any other human authority upon earth. This was the good man that embraced his lordship, as if he had been his child; and, loving his company, received him into familiarity of discourse, conferences, mutual intercourse of affairs, and reciprocal acts of good will and friendship, as if, even before he was king's counsel, he had been a co-attorney-general. And

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he was not only the great cause of his lordship's proficiency and sudden rising in the law, but his mere acquaintance and favour may be justly accounted one of his lordship's capital preferments.*

These opportunities may be esteemed, as they really were, most benign to the credit of a young counsel, yet the virtue intrinsically moved from his own capacity, for without some transcendency on that side, the effect had been reversed, and proved loss rather than gain of reputation. There were some more such accidents, which augmented his lordship's esteem in the law; which I shall touch upon, but first mention his going the circuit, to which they properly belong. And here I am to show what great application and industry he used in that branch of his practice, which in a few years raised him to the post (as they call it) of cock of the circuit, which supposeth him (as truly he was) a counsel of one side or other, in

Used the Norfolk circuit.

* In the Examen, (p. 510,) North has given some farther account of Sir Jeoffry Palmer:—"His wisdom and generosity were incomparable. During all the troubles of the times he lived quiet in the Temple, a professed and known cavalier; and no temptation of fear or profit ever shook his principle. He lived then in great business of conveyancing, and had no clerks but such as were strict cavaliers. One, I have heard, was so rigid that he could never be brought to write Oliver with a great O. And it was said the attorney chose to purchase the manor of Charleton, because his master's name sounded in the style of it."

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every cause of value to be tried. His lordship stayed not long after he was called to the bar, before he took upon him to go circuits. His choice was that styled of Norfolk, where he was best known, and that by employments and performances, as well as family and acquaintances. He resolved to go through, although the first counties, as Bucks, Bedfordshire, Huntingdonshire, and Cambridgeshire, are very sterile to a beginner, and no young man, at his first entrance into practice, can expect much business under the service of an apprenticeship and succession to those who have the possession, till they fall away. But his resolution was to persevere, knowing success in circuit business to be a cardinal ingredient in a lawyer's good fortune. And he ordered the matter so that, whether he had much or little to do, he did not lose his time; for he was a diligent noter of every passage that was in the court or elsewhere, in the law, new, or he thought material. And he made himself judge so far, that if a good sentence came from the mouth of an indifferent judge, or even of the counsel, he noted it, and whatever the best judge might say, if it did not agree with his reason, he took no notice of it. So bees gather honey from all sorts of flowers. He was exceeding careful to keep fair with the cocks of the circuit, and particularly Serjeant Earl, who had almost a monopoly. The serjeant

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was a very covetous man, and when none would starve with him in journeys, this young gentleman kept him company. Once at Cambridge, the serjeant's man brought his lordship a cake, telling him, "he would want it, for he knew his master would not draw bit till he came to Norwich." And it proved so. They jogged on, and at Barton Mills, his lordship asked the serjeant if he would not take a mouthful there. "No, boy," said he, "we'll light at every ten miles' end, and get to Norwich as soon as we can." And there was no remedy. Once he asked the serjeant in what method he kept his accounts; "for you have," said he, "lands, securities, and great comings-in of all kinds?" "Accounts, boy," said he, "I get as much as I can, and I spend as little as I can; and there is all the account I keep." But his lordship was sure to keep the serjeant's discourse flowing, all the way they rode; for being mostly of law, and tricks, and sometimes of purchases; management, and the like, it was very beneficial to one who had his experience to gather: and all he received from others, he made his own. And in the court, if he was concerned as counsel, he stood in great awe of the chief practisers; for they having the conduct of the cause, take it ill if a young man blurts out any thing, though possibly to the purpose, because it seems to top them; and sometimes, if it doth not take with the court,

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throw up, saying, "the cause was given away," which almost blasts a young man. Therefore, when he thought he had a significant point to offer, he first acquainted the foreman with it, which was commonly well taken: and he in return would say, "Move it yourself," and then he seconded it. These discretions, respecting the counsel, did him great service; and I have more to remember anon, that respect the judge.

Governed the commission for dividing the fens, with applause.

But first, I shall remember some of the advantages which brought his lordship so soon into circuit business. One of which was his being put into the commission, pursuant to the act of parliament, for dividing the great level of the fens; and which conduced much to his lordship's fame. And that was done to the intent his lordship should take the chair, and direct in the execution of it. When this commission first met, and he was put in the chair, he observed that they had no copy of the act before them, but only that which was printed for common use, and he did not think that sufficient, for it was but a private act, of which the judges did not, *ex officio*, take notice, and there might be errors of the press: and accordingly he took care to have an authentic copy examined by the record itself. After that he proposed to the commissioners such apt methods for their proceedings in that commission, that the gentlemen were extremely pleased:

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for they were satisfied that all he proposed would be for the ease of the commissioners and of the country, and also conducive to an equal distribution of justice to particular persons, who for their interests appeared before them. And these methods being so fairly and ingenuously displayed at the first, the gentlemen of the commission admired the invention and dexterity of one so young, and accordingly agreed to every thing he proposed. And afterwards, through the whole course of that commission, he had the authority of a judge amongst them, and was seldom interrupted or opposed in any thing he dictated to them; for they saw plainly he had both skill and will to do right in every thing. And the country people, seeing him rule the roast (as they say) there, took him for the judge in earnest. And if any of them had a case to come before the commissioners, of which there was like to be any doubt or contest, they would, if possible, come along with a client to him at the assizes (of which practice I reserve to speak afterwards), and there bow and cringe that they might be known again at the commission. Thus every opportunity of transacting, put into the hands of a person capable of doing well, proves an ingredient of fame, which in professions precarious and competitory as the law is, perpetually, and in a geometrical proportion (to use the allusion) enlarges the sphere

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of his practice; and with those that are incapable, or do not acquit themselves well, it hath the contrary effect.

Constituted judge of the Isle of Ely.

Another employ fell to his lordship's share, which did him credit, and consequently augmented his business in the country: and that was his being made judge of the royal franchise of Ely. He was constituted by Dr. Lane, then bishop. He succeeded Wren; one of whose sons, Mr. William Wren, was high bailiff of the liberty, and took the seat of an high sheriff; and so the judge, with all the titles of a judge of assize. This was the first bench of justice (if the commission is not accounted one) that his lordship sat on; and to say truth, is a very excellent judge school: for there all sorts of law business come before him, arrests, attachments, demurrers, pleadings, issues, and trials, and all that chicane in Westminster-hall, the difference lying chiefly in greater and less. Divers of the circuit counsel and neighbouring attornies have business and attend there. The worst of the court is, that the pleadings are *de horâ in horam;* and the records are kept by papers filed, and not (as I know) ever made up into rolls. It is so in the court of the county palatine of Durham. But those, and even the ordinary courts of assizes, as to the fairness and regularity of the plea rolls, must yield to that of Lancaster; and the curiosity there is (or was) such that the

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prisoners were arraigned upon the roll, and not upon the bill found, and the whole proceeding to judgment and execution, was also entered up, and not kept in minute books, as at the assizes; which is exceeding commendable in the prothonotary and his clerks there. But, as to the Isle of Ely, whether, since that time I write of, in which the sessions have been neglected and new discouragements continually growing, the court hath not so well answered the attendance of a judge as it did then, I cannot say.

Regulated the practice and demanded a cognisance.

His lordship found the ways of the attornies, in their practice, very loose; and scarce any of them could be positive what the rules of the court were; but, upon any doubt, some said one thing, and some another: and the business was done in a huddle, almost by word of mouth, there being nothing but a paper upon the file in order for a trial. His lordship endeavoured to regulate all these disorders; making a beginning in the method, which he afterwards pursued in all his judicial places; that is, first, by informing himself, as well as he could, what were the rules, and then, by slow steps, one thing after another, making alterations for the better. But one thing happened which his lordship, with no ordinary exactness of skill in the law, carried through. A suit was commenced in the court of Common Pleas at Westminster, for a cause which arose in the royal

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franchise of Ely. The bishop expected that his judge should see right done to his franchise, which might be hurt if such precedents were let pass. And his lordship thereupon took care that due authorities, regarding this particular case, should be signed and executed by the bishop, directed to him, requiring him to repair to the court of Common Pleas, and for him, and in his name, to demand of the court the cognisance of that cause then depending in the court. And his lordship went to the bar, and, as bailiff of the bishop, made his demand in due form. And the court, who are hardly enough brought to oust themselves of any jurisdiction, scrutinated all points of form, and, finding nothing amiss in the demand, granted the cognisance, and the cause was removed from that court to the court of the franchise. I know no footsteps for many years before, or at any time since, of any such demand made or allowed. But the law was plain, and the forms being out of the common road, not, without great care, foresight and skill, to be pursued, and strict exception and cavil to be expected, the case required such a counsel as his lordship was, to prevail in it. I had this matter from his lordship's own mouth; but, finding no papers concerning it, I cannot point to the time when the transaction was.

Great benefit by attendance at the eyre.

There was another opportunity fell in his way as propitious as he could have wished, not only

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for fame but for learning; and that was a formal iter or justice-seat of the forests, that was ordered and proclaimed, and judges were appointed to assist the lord chief justice in eyre, the then Earl of Oxford; and counsel for the king were also declared; and they were, Serjeant Maynard, his lordship, and who else I do not remember. These went all out together, and passed from place to place; and the judges were solemnly received by the countries as in a circuit; and thus all the greater part of the forests on this side Trent were visited. The counsel for the king, in all causes in which the king's title was not in question, had liberty to advise and plead; so good money, besides a gratuity and riding charges, was picked up. But it is not readily conceived what advantage here was by gaining an idea of the ancient law in the immediate practice of it. For the court of the forest is in nature of an iter; and the justices proceed, as anciently the justices in eyre did, by presentments, claims, seizures, replevins, &c. very unlike the ordinary processes of the common law in courts of pleas. It is true that the commissions of oyer and terminer and gaol delivery are eyre also, but restrained to personal crimes. Here it is of rights, and those after a peculiar law of forests, as privileges, franchises, grants, customs, purprestures, and offices of divers authorities and jurisdictions; whereof the learning would

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cost a student much time and pains, besides going out of the way of his more beneficial studies to acquire. And here the whole time of the several sessions being taken up with the transaction of causes of this nature, the judges well skilled in the old crown law and the prerogative, and no person more deeply learned than Serjeant Maynard, who though a counsel was also an assistant to the court, one who had the opportunity of attending, much more an employment in these courts, as his lordship had, must needs perfect himself in the general knowledge of the forest law, and the jurisdiction of the lord chief justice in eyre. This was an opportunity that rarely happens; many reigns pass before there is another; for it is a great charge to the crown in salaries, expenses, and rewards; and the profits redounded to the lord chief justice in eyre. And it was said at that time, that the king's intent in ordaining a sessions of eyre, was purely to gratify the Earl of Oxford, who was one that ever wanted royal boons. But, as to his lordship and his advantages, besides the credit of such an employ, which was great, this service made him study the forest law a little more than otherwise he had done. But now the forests seem to be neglected, or rather granted out by piecemeal, which kept in due order, as in elder times, and destructive encroachments of the countries suppressed, not only

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the deer (which are a trifle) but timber would have such increase as would supply shipping, and save great charges, and be a vast accommodation of the royal navy. And it is not to be wondered that this œconomy of the forests is laid aside, saving only as to offices for wardships; for the subject matter is unpopular, and the officers are on the one side corrupt and yield to all abuses, and on the other side, oppress and extort money of all they can; and, as if that were the end of their institution, mind little else.

Had favour, but ever observed the judge.

His lordship was not without eminent good fortune, as well as discretion, to help him forward in his circuit practice, which made him arise in it faster than young men have commonly done. As when the Lord Chief Justice Hyde* was alive, he usually went the Norfolk circuit. The chief justice was a western man, but would not take the circuit so called, because he would not break a law with a *non obstante*. And this judge was industriously favourable to his lordship, calling him cousin in open court, which was a declaration that he would take it for a respect to himself to bring him causes, and that is the best account that can be given of a favourite; in which capa-

* Uncle to the famous Earl of Clarendon. He was employed to draw the answer to the impeachment preferred by the Commons against the Duke of Buckingham, and was rewarded for the service with the place of lord chief justice.

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city a gentleman pretends to be easily heard, and that his errors and lapses, when they happen, may not offend the judge, or hurt a cause, beyond which the profession of favour is censurable both in judge and counsel. But this benefit grew, like that under Sir Jeoffry Palmer, at first out of a Temple acquaintance, which consisted of young Mr. Palmer and Mr. Edward Hyde the lord chancellor's son, and some others of that family, who introduced his lordship to their patrons: which shows that, in the erecting of a lawyer, inns of court commons and conversation may be of vast use. In circuit practice there is need of an exquisite knowledge of the judge's humour, as well as his learning and ability to try causes; and his lordship was a wonderful artist at nicking a judge's tendency, to make it serve his turn, and yet never failed to pay the greatest regard and deference to his opinion: for so they get credit; because the judge, for the most part, thinks that person the best lawyer that respects most his opinion. I have heard his lordship say that sometimes he hath been forced to give up a cause to the judge's opinion, when he was plainly in the wrong, and when more contradiction had but made him more positive; and besides that in so doing he himself had weakened his own credit with the judge, and thereby been less able to set him right when he was inclined to it. For, when

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he found it went against the grain, he would not teaze, as the way is, to get credit with the countrymen, who would be apt to say, "Look what pains he takes;" but for that time, since there was no remedy, let the matter go. And all this without blame with respect to his clients, for he could do no more in any respect, but might do worse by many. And a good opinion so gained often helps at another time to good purpose, and sometimes to ill purpose; as I heard it credibly reported of Serjeant M—y—d, that being the leading counsel in a small-fee'd cause, would give it up to the judge's mistake, and not contend to set him right, that he might gain credit to mislead him in some other cause in which he was well fee'd.

Great diversity of judges.

There were some judges came that circuit, of whose abilities time hath kept no record, unless in the sinister way, as Morton, Archer,* &c. If such expressed any thing in favour of his lordship's client, he would echo, "Ay, my lord;" and then the other side fretted at him, as one that knowing better ought not to say so. Once Archer noted a difference between a renunciation of an executorship upon record, and *in pais*. "Ay, my lord," quoth the counsel; which made the judge

* Appointed a judge of the Common Pleas, 4th November, 1663; removed in Christmas vacation 1672. Holding his office *quamdiu se bene gesserit*, he refused to surrender it, although prohibited from exercising his judicial functions.—(*T. Raym. Rep.* 217.)

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as fierce as a lion, when he was so backed; and woe be to the other side if they contradicted it; though it was no better than arrant nonsense. There came other judges who were, and ever will be, famous among the learned in the laws; as Wadham Windham,* and the Lord Chief Justice Hales. His lordship had no way to court these, but by his learning and strength of reason. Hales had an early opinion of his lordship's skill in the law, and believed he would grow eminent in the profession. For once, when the court was sat, he perceived him crowding very hard to get in, and from the bench spoke to the people to make way for the little gentleman, "for," said he, "he will soon make way for himself." In short, his lordship took all the pains he could to settle himself well in circuit practice. He used to say that the circuit found him business for the town, and the town for the circuit.

Most careful to be instructed.

One thing was principally his care, which was to take good instructions in his chamber. He examined carefully the issue, as the pleadings derived it; and perused all the deeds if it were a title, and not seldom examined the witnesses if it were fact; by this he was enabled to make a judgment of the cause, and to advise his client as to going

* Appointed one of the judges of the King's Bench in 1660. The references in the margin of Fitzherbert's *Natura Brevium*, to the Year Books and Reports, display the industry and learning of this eminent lawyer.

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on or not. And the attorney, as well as the client, by his care and dexterity in probing the cause, starting objections, inventing points, foretelling events, and what the judge will say, and the like, observed his character, and that he might be depended on, which engaged both afterwards to come to him again; especially the attornies, who love such as have skill, and take pains to credit them by securing the best event a cause will bear.

Mr. Coleman a contemporary and friend.

I am advanced so far in these observations, as, without more, it may plainly be perceived that from an humble beginner, rejoicing at a cause that came to him, his lordship soon became cock of the circuit; and every one that had a trial, rejoiced to have him on his side. There was another gentleman, who grew up together with his lordship in the circuit practice, with nearly the same speed, one Mr. Coleman, of the Burnt Ely family in Suffolk. And as it happily fell out, there was no sort of emulation or competition to create uneasiness betwixt them, for they were for the most part opposed: if one of them was for the plaintiff, the other was for the defendant, and from the beginning to the end, held not only a fair correspondence, but were very good friends; and how could it be otherwise, when both were ingenuous, good lawyers, ready speakers, candid gentlemen, and who in pursuit of their own, improved each other's interest? Mr. Coleman had a very comely as-

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pect, and a very voluble tongue. It was said that an attorney asked his client that stood behind him, which of those two gentlemen should be his counsel? "Who?" said he, "Why that nimble chaps there." It fell out that this gentleman died immaturely, else he had fallen into that track of preferment as Sir William Jones fell into; of which there is an account elsewhere. There were divers serjeants and others, that went the same circuit, but none that could cope with these two. I have heard them relate passages in their circuit practice, to make the company merry. As when they two have been together, and a brace of serjeants to boot, and they knew a flat nonsuit in the cause, which the others did not see, they stood aside, and left the brethren to wrangle with the court about nothing, till having laughed and sneered enough, one stepped forward, and cutting the thread, the cause fell all at once.

Case of his aunt the Lady Dacres.

I have here showed divers instances of his lordship's favourable means of showing his abilities, but little or nothing of his conduct in any particular matter; and because his character may better appear by such, than by general eulogies, I will subjoin one or two of his dexterous exploits. The Lady Dacres had suits depending against Chute, the eldest son of her husband then deceased, for a sum of money secured upon land by her marriage contract; which Chute had married

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her daughter, and dying left upon her hands four grandchildren to take care of. She entered upon the estate, and took the profits for divers years, by which she became accountable. His lordship, being sensible that his aunt ran great hazards of being called to an account by the eldest son at his full age, and instead of having debt, being made a debtor, advised her to get a decree, and a manager appointed, and she to answer only what monies she actually received, and as things fell out afterwards, the reasons for this precaution appeared most lively, for it preserved her (who kept no good account) from oral testimonies of imaginary values, which had pinched her to the quick, if she had not had that defence. That course in Chancery is more common of late, than it was then; and it fell not under every one's cap to give so good advice. His lordship had much to do with this aunt; who used him but scurvily; as will appear from what I am going to relate.

She undertakes to defame him, and his humanity.

She had a bill in Chancery against her, and his lordship must draw her answer; which Serjeant Fountain perused, and directed to be more full in a chief point of fact. Which was done, and then other counsel told her, she had confessed too much, and the answer must be taken off the file and mended; which with leave of the court was also done, and no harm yet. But his lordship's father asked her jocularly, "if she gave his son any fees

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for the business he did her?" This made her think it a plot of the young lawyer, (but far from any colour of truth,) to get money out of her; for he never saw a penny of her money, for all his pains in trotting to and fro, and doing business for her. And from that time she threw him off, accusing and railing at him, all the town over, for falsifying her answer, and making her swear what was not true (if it had stood), to the ruin of her cause. And herein she served herself another way, for her adversary defamed her for swearing and unswearing, and it was not amiss to have a button in the room. But she carried the quarrel so high as to get one of no small account, to let Sir Jeoffry Palmer know what a snake (meaning his lordship) he had in his bosom. In short, she intended his ruin if possible. But the merriment which the good attorney-general made with his cousin North for his early practice, was a diversion sufficient. All this is not unseasonable to be remembered, because it reflects upon his lordship the singular virtue of humanity. For all the while she defamed him in this manner, which was for several years, he made no replies, but by smiling, and paid her all the devoirs due to such a parent, and served and assisted her in all her exigencies, she never failing to make use of him, when she found it might be of profit to her: and yet she never could afford him a good word to his and her dying days.

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His lordship had a relation, one Mr. Whitmore of Balms near London, a humoursome old gentleman, but very famous for the mere eating and drinking part of housekeeping. He was owner of Waterbeach near Cambridge, and took a fancy that his estate ought not to pay tithes, and ordered his tenants expressly to pay none, with promise to defend them. The parson had no more to do but to go to law, and by advice brought an action of debt, for treble damages, upon the statute against substraction of tithes. The tenants got the whole demand to be put in one action; and that stood for trial at the assizes. Then he consults his cousin North, and retains him to defend this cause; but shows him no manner of title to a discharge. So he could but tell him he would be routed, and pay treble value of the tithes, and that he must make an end. This signified nothing to one that was abandoned to his own testy humour. The cause came on, and his lordship's utmost endeavour was to fetch him off with the single value and costs; and that point he managed very artificially: for first, he considered that Archer was the judge, and it was always agreeable to him to stave off a long cause. After the cause was opened, his lordship for the defendant, stepped forwards, and told the judge that "this would be a long and intricate cause, being a title to a discharge of tithes, which would require the reading a long series of records

A piece of art in a trial for tithes.

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and ancient writings. That his client was no quaker, to deny payment of tithes were due, in which case the treble value was by the law intended as a sort of penalty. But this was to be a trial of a title, which his client was advised he had to a discharge: therefore he moved that the single value might be settled; and if the cause went for the plaintiff, he should have that and his costs (which costs, it seems, did not go if the treble value was recovered), and then they would proceed to their title." The other side mutinied against this imposition of Mr. North, but the judge was for him, and they must be satisfied. Then did he open a long history of matters upon record, of bulls, monasteries, orders, greater and lesser houses, surrenders, patents, and a great deal more, very proper if it had been true, while the counsel on the other side stared at him; and having done, they bade him go to his evidence. He leaned back, as speaking to the attorney, and then, "My lord," said he, "we are very unhappy in this cause. The attorney tells me, they forgot to examine their copies with the originals at the Tower;" and so, folding up his brief, "My lord," said he, "they must have the verdict, and we must come better prepared another time." So, notwithstanding all the mutiny the other side could make, the judge held them to it, and they were choused of the treble value. This was no iniquity, because

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it was not to defraud the duty, but to shift off the penalty.* But the old gentleman told his cousin North, he had given away his cause. His lordship thought he had done him service enough; and could but just (with the help of the beforesaid reason) satisfy himself that he had not done ill.

In a debauch escaped nearly with his life.

Before I mention the farther steps of his lordship's rising, I must get rid of a scurvy downfal he had, which had well nigh cost him his life. That he was what was called a sober person, was well known; but withal, that he loved a merry glass with a friend. But once in the circuit, being invited, with the rest of the counsel, to dine at Colchester with the recorder Sir John Shaw, who was well known to be one of the greatest kill-cows at drinking in the nation, he, with the rest of his brethren, by methods too well known, got very drunk. They were obliged to go on, and

* A singular apology for the very disreputable and unprofessional stratagem practised by the learned counsel. The author's excuse is founded on a correct application of that highly injurious distinction between that which is merely a *malum prohibitum*, and that which is *malum in se*. It is to be regretted that Sir William Blackstone should have recognized this dangerous and unphilosophical distinction. The practice of Sir Matthew Hale was very different from that of Mr. North. "He abhorred those too common faults of misreciting evidences, quoting precedents or books falsely, or asserting any thing confidently, by which ignorant juries or weak judges are too often wrought on." *(Burnet's Life of Hale,* p. 72.)

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in that condition mounted, but some dropped and others proceeded. His lordship had a clerk, one Lucas, a very drunken fellow, but at that time not far gone. He thought it his duty to have a tender care of his master, who having had one fall (contrary to the sound advice of his experienced clerk), would needs get up again, calling him all to nought for his pains. His lordship was got upon a very sprightly nag, that trotted on very hard, and Lucas came near to persuade him not to go so fast; but that put the horse upon the run, and away he went with his master full speed, so as none could follow him. The horse when he found himself clear of pursuers, stopped his course by degrees, and went with his rider (fast asleep upon his back) into a pond to drink; and there sat his lordship upon the sally. But, before he fell, Mr. Andrew Card, now an eminent practiser of conveyancing in Gray's-Inn, and then Mr. Coleman's clerk, came up time enough to get the horse out of the pond before he fell off; else he had been lost: for which service his lordship ever had a value for Mr. Card.

Mortified at the accident.

They took him into a public house nigh at hand, and left him to the care of his man; but so dead drunk, that he knew nothing that happened to him. He was put into a bed; and the rest of the company went on, for fear of losing their market. Next morning, when his lordship awaked, he found

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he was in a strange place, and that, at a fire-side in that room, there were some women talking softly (for talk they must): he sent out all his senses to spy, if he could, what the matter was. He could just perceive they talked of him. Then he called for Lucas, and bade all go out of the room but him; and then, "Lucas," said he, "where am I?" He was glad the danger (of which Lucas gave him a sensible account) was over, and got him up to go after his fellows.

Moderation in drinking.

I remember when his lordship told this story of himself, he said the image he had, when his horse first trotted, and so faster and faster, was as if his head knocked against a large sheet of lead, as a ceiling over him; and, after that, he remembered nothing at all of what happened till he awoke. His lordship, of one that was not morose and uncomplaisant, was the most sober that ever marched through the world as he did. I, that was almost continually with him, never saw him in a condition they call overtaken; and the most hath been but just discoverable in his speech; for he had strength of head to bear a great deal: and when he found that infirmity coming upon him, he used to sit smiling, and say little or nothing; so harmless a thing of a petit good fellow was he: and this only in company that, in some sort, constrained him; and that was very seldom. As once, when he was attorney-general, he dined with the Earl

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of Sandwich, and in the afternoon went to the privy council, to plead upon a petition before the king: and the next day after, the earl asked one of the lords how Mr. Attorney behaved himself; "Very well," said that lord. "I thought so," answered the earl, "for I sent him instructed with at least three bottles in his belly." That was a good medicine for his modesty, and perhaps, at court, no ill preparative. But, setting aside that rhodomontade, his lordship, by a steady temperance and sobriety, held the empire of his reason, and vigour of his constitution, safe and upright, till, under the cold hand of death, both fell together. But, as for such entertainments as these, it is great pity that the tokens of barbarity should yet remain; and much more that the consequences, often fatal, should be as braves of conquests, with a people who would take it ill not to be accounted civilized, wise, and learned.

How his leisure time passed.

His lordship's course of life, while he was in great business, was most philosophical, till he was solicitor-general, and married; and then he kept house, and at meals scarce ever failed his family: but, before, he used the commons in the hall at dinner personally, and at night in his chamber. And when he was out of commons, the cook usually provided his meals; but at night he desired the company of some known and ingenious friends

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to join in a costelet and a sallad at Chattelin's, where a bottle of wine sufficed, and the company dressed their own feast, that consisted in friendly and agreeable conversation. But in term, and while business was stirring, he kept his chamber, because (in order to next day's work) the attornies and agents came in at all hours; and then he desired the company of a friend or two, that, in the intervals of taking instructions, he might come out and solace a little with them, and return when he was summoned. And the repast among us all was only his commons and a single bottle; but what is that to the feast I mentioned, which was never wanting? When his practice was but little, and, for the most part, when he was a student, he made it a rule not to leave his chamber before eight at night; and if he had no appointed company, he hath often taken me to walk about in the gardens with him till bed-time; for he never loved at such times to be alone; but, having any company, he could discharge his thoughts by discourse. After he was of the king's counsel he kept a coach, and, at leisure times, used to air himself in that; but with a friend to receive his discourse and give handles for more. But while I was with him, which was first while Sir Jeoffry Palmer was but just alive, I cannot say I ever knew him to have been twice at any tavern.

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Made solicitor general, and dropped circuits.

Here we drop our circuiteer; which character lasted till his lordship was made the king's solicitor general: and that was when Sir Edward Turner was made lord chief baron: for upon the death of the attorney-general Palmer, Mr. Solicitor Finch was made attorney; and there being an opposition made by the Duke of Bucks, in favour of Mr. Jones, against his lordship, who had much the fairer pretence, an expedient, for that time, was found, by making the then speaker, Sir Edward Turner, solicitor. But of this affair we have his lordship's notes, which I shall insert, and add a comment, according to promise.

His note about it.

"His (Sir Jeoffry Palmer's) death made a contrast."

This incident made the wheel of preferments turn. Sir Heneage Finch, who was solicitor, was made attorney-general. Then the question came who should succeed him? The Lord Keeper Bridgman, and the new attorney, besides the indifferent interest at court, and, I believe, the king himself, were for his lordship; and why not? For he was next oars, the king's servant already, and had not demerited. It had been ungracious to have postponed him, and taken in a new man that never had served; and none might guess at his inclinations to serve well. And this was Mr. Jones, who, being a proud man, could scarce bear his lordship to go on, stepping before him. He

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applies to the Duke of Buckingham, who at that time was respected as a premier minister at court. But his character little suited that pretension; for he commonly turned day into night, and night into day, and knew no order of life, or time, but after the calls of his appetite; and those were either lewd or profane. While he was in affairs he favoured the true enemies of the court, the fanatics: and when he was out, he set up for one of the heads of that faction. He was so entirely abandoned to his pleasures and ease, that he seldom regularly attended on any account; but yet, for revenge or faction, he was a diligent solicitor; and undertook to get Mr. Jones the solicitor's place. He plied the king so close, that he knew not how to clear himself of him. But it was understood that the king could not be brought to dash cold water in Mr. North's face, against all reason, justice, and his majesty's own interest; and so it depended some time. At last an expedient was found, viz.

"Sir Edward Turner made solicitor. His promotion made no contrast."

This gentleman had served long as speaker of parliament, and had been useful to the crown, and also to himself. But, on the discovery of a small present made him by the East India Company, he was blown in the House of Commons. The anti-court party took all advantages against

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the court, and made a mountain of this mouse; for it was but a trifle. However, it lost him much of his credit and authority in the chair, which he was used to have; and he thought fit to give way, and not sit there longer to be exposed to the affronts which would continually be thrown at him. This made him incline to accept the solicitor's place, until somewhat better fell, and then the king was at ease. About six months after, Sir Edward Turner was made Lord Chief Baron of the Exchequer, and the solicitor's place fell void. The king resolved to have no more such trouble about filling it; but forthwith declared that Mr. North (then Sir Francis) should succeed.

"Sir William Jones, king's counsel."

And to satisfy the Duke of Buck's in some measure, his friend, Sir William Jones (then also knighted) was made of the king's counsel. And since (as they say) half a loaf is better than no bread, this promotion, in part, though not altogether, satisfied his ambition; for it was sufficiently thereby declared that, if not to lead, he was sure enough to follow, in the track of preferments.

Reasons for giving the characters of some persons contemporaries with his lordship.

And because it is impossible to account for the lives of busy men, without touching upon some certain dealings of those persons with whom they transacted; whose behaviour and tempers

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will be interwoven, and make good the fulness of the relation, as things of different complexions distinguish each other; and the most retired converse is material to characters, because a man is known by the company he keeps: it will be proper to insert in this work, the portraits of some persons, contemporary with his lordship, consorts and coadjutors, as well as adversaries in business. And hence will result a petit biography, wherein the remarkables may assist the theory of human nature, which consists in the knowledge of its perfections and infirmities. And none more famous for both of these than Sir William Jones, who, upon the strength of the Duke of Bucks, set his lordship so hard for the solicitor-general's place. But having said so much of him already in the Examen, I shall make no repetition here. I will only add that,

Certain mistakes that might sit heavy upon his mind, with his behaviour about plots.

If I may have leave to guess, the greatest load of all that sat upon, and oppressed, his spirits, was his undue fervor in prosecuting men to death, for high treason, upon the foot of Oates's plot. There are reasons to make one believe he was at the bottom of the whole stratagem; which, if the truth were so, stains his character, and evacuates all that hath been said of his probity, unless the heathen sentence, *regnandi causa*, or for the sake of governing, pass for good morality. His figging about at the first entrance, and sooner than it could

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be known that Godfrey was in danger, except by his not dining at home: his running from one great man to another, as he did, to say it was thought that Godfrey was made away with by the papists: and once, being at his villa in Hampstead, when the whole faction laboured to scatter terrors about the town and nation, as if nothing was safe from the papists, he sent an express to London to have his billets removed from the fore to the back cellar of his house in London, for fear of the fireballs of the jesuits: and his using all the arts of his profession against the lives of so many poor men as he convicted to death for the plot, and some no very commendable ones to be used even in common causes of property, as have been touched elsewhere; and, after that, setting up the ignoramus practices, by justifying the perjury in print; which was when the tables were turned, and his friends were obnoxious; as if the law were a party weathercock: and then writing to justify the exorbitant doings of the Westminster House of Commons, after the whole nation resented them, by a pamphlet in answer to the king's declaration of his reasons:—all these matters were false, and, as proved, vain efforts in party work; which he was sensible turned upon him, and, staring him in the face, told him he ought to have been wiser. One thing his lordship remarked of him; which was, that, when any no-

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table party project was in embryo, he made him a visit either to terrify or espy, and, by the air of his countenance, to gather somewhat. And this more especially when any harm was intended his lordship through the House of Commons. Once he came to see him, and told him that "Now they had them fast." It was about the time of the reform of the council, and when he had quitted his place. "Whitehall," said he, "must render in six months; and what will you do then?" His lordship answered quick, "I will join with those, that shall turn you out." This answer made him look very dull, being not that which he came for. These instances made his lordship conclude that, whenever he had the honour of a visit from him, there was somewhat very sinister in the wind; and the ill omen appeared. But, to conclude, if this gentleman could have been purged of an immane conceit of himself and of his own worth, and made clean from his disaffection to the crown and monarchy of England, which always warped his engagements towards the sectarian and republican model, and made him restless and untoward in all his actions, he had been deservedly a famous professor of the law, and, as such, celebrated in after-times equally with, if not superior to, the rest of his contemporaries.*

* Sir W. Jones appears to have been one of the few honest lawyers of his time. Even Roger North, though much dis-

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Attended chiefly at the Court of Chancery, and why.

But, to return. His lordship, as well before as after his being made solicitor-general, and while posed to depreciate his merits, cannot wholly deny them. Like many others of the best men of his day, Sir W. Jones was led by his dread of popery to concur in proceedings characterised by the greatest cruelty and injustice. He also took a distinguished part in the debates on the Bill for excluding the Duke of York from the succession, and had the boldness to place the policy of that measure in its true light,—"and lastly, for the conscientious part, he said the Duke was not excluded for his religion, but for his incapacity of governing according to the English laws, which incapacity, whether it proceed from religion or any other cause, is all one to them." (*Memoirs of James II.* vol. i. p 607.) That the design of James was not so much to introduce the Catholic religion, as to establish a despotic authority, was the opinion of Mr. Fox (see the Fragment of his History and Mr. Serjeant Heywood's Vindication); and this opinion is confirmed by the late publication of the Stuart Papers. The message sent by James to his brother before the meeting of Parliament in 1681, is tolerably conclusive on this point. Mr. Churchill, the bearer of the message, was instructed to tell the king "that matters were come to such a head that monarchy must be either *more absolute,* or quite abolished." (*Memoirs,* vol. i. p. 659.)

In the Examen (p. 509), North gives the following character of Sir William Jones, whom he pronounces to be 'in the general no bad man.' "He was a person of very clear understanding, and (if possible) clearer expression; wherein he was assisted by an extraordinary opinion he had of both, as also of his own general worth, for that was his foible. He was extremely proud and impatient of competition, and much more of being left behind, as it was his chance to be in the course of his preferment, whereby he missed of his desired post. And that partly occasioned a sort of restlessness, which made

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he was king's counsel, made the best of his time in Westminster Hall. And however, at first, he planted himself in the way of King's Bench prac-

him commit several gross errors in the main chances of his life. His felicity was never to be disturbed in speaking, nor by any audience or emergence put by the forecast and connexion of his thoughts; but dilated with a constancy, steadiness, and deliberation, admirable in his way; so that in speaking as counsel, one might mistake him for the judge. He affected somewhat of the rustic phrase of his own country, which was Gloucestershire, as to instance in a word, *althoff* instead of *although* as we pronounce, which was no disadvantage, but rather set him off. He studied the law in Gray's Inn, and rose first in the King's Bench practice. He affected also general learning, as history, and theology; and, as great men usually have their vanities, his was to profess of that sort more than belonged to him. And accordingly he chose his company, who were for the most part divines, such as were most eminent in his time, as Tillotson, &c.; and I dare say, they profited more in his company than he in theirs. I have touched his felicities; his infelicity was a penchant towards the anti-court, or rather republican party."—"Jones," says Burnet (*Own Times*, vol. ii. p. 681), "was an honest and wise man. He had a roughness in his deportment that was very disagreeable, but he was a good-natured man at bottom, and a faithful friend." During the chancellorship of Shaftesbury, Jones was spoken of as his probable successor. "The service which I may draw from Mr. Sidney does not appear, for his connexions are with obscure and concealed persons; but he is intimate with the *Sieur Jones*, who is a man of the greatest knowledge in the laws of England, and will be Chancellor if the party opposed to the court shall gain the superiority, and the Earl of Shaftesbury be contented with any other employment." (*Letter of Barillon to Louis XIV. 5th Dec.* 1680. *Dalrymple, App.* 287.)

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tice, he found such beneficial calls to other courts, especially to the Chancery, that he thought it best to comply with them. And so to the Exchequer, Duchy, &c. which filled him exceedingly with business; and none more gainful than that of the Chancery, in which he got so much credit, that, at length, he made that court his home, and went off to other courts only on great occasions, as when solemn arguments, trials at the bar, and the like, engaged him. But this I have heard him say, and sometimes observed, that, when he was not concerned in the causes at hearing in Chancery, he used to go over to the King's Bench; which being a court of law, his vacant time, spent there, would be more beneficial to him. And so he sat within the bar, with his note-book, reporting, as the students about the court did. He as little neglected opportunities of acquiring knowledge in the law, as of getting money by the practice of it. Witness this one instance; every Christmas, during all the time of his practice, he read Littleton all over.* And this he enjoined himself for a task: for that book having gained an authority, as a tract of law, and the foundation of conveyancing, he judged it necessary to be

* This fact is mentioned by the author in his "Discourse on the Study of the Laws," (p. 10,) where he recommends the perusal of Littleton without a Commentary. *vide ante p.* 21.

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punctually remembered, without giving time the advantage to obliterate, or corrupt any part of it from his just thoughts.

It is obvious to imagine that a person preferred, and in capital practice of the law, must needs be noted for many excellent performances, as he was in numerous instances of nice causes that he conducted. But it is not possible to go over the list of his clients, and show what part he had in their several hearings, arguments, trials at law, and the like, unless a diary of causes had been kept for that purpose; and that must have been a large one, for he was in every cause of moment. Nor can I say, upon my memory, how many families of nobility and others, having once made use of his advice, made him afterwards arbiter of all their concerns; nor is it to any good purpose so to do, unless it might be also demonstrated wherein his lordship's sagacity, or management, was superlative. It may be equally alleged of every eminent practiser in the law, that he was concerned in great causes, whereof some went on his side. So that a general observation of consequences, such as his never losing ground, but rather rising in reputation, from the first to the last, and that, passing through the meanest, his lordship arrived at the utmost preferment, and all without obloquy or reprehension, implies all that can be inferred to his advantage, even from the particulars, if we

Chief in practice, reputation, and trust.

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had them. But yet I shall show some instances that fell within my own observation, which were of an extraordinary nature, and showed his lordship's singular application and success in causes that rested wholly upon his advice and conduct.

Why the case of Soams and Bernardiston is left out.

And here I might properly insert the great cause between Soams and Bernardiston, which was recovered from a desperate malign influence of the times, purely by the strength of his reason and debate, against a torrent of authority. But since it is particularly related in the Examen,* and a clear account of the several steps it took in Westminster Hall, and how it was finally adjudged in Serjeant's Inn Hall, by his lordship, when he was chief justice of the Common Pleas, may be seen there, I shall say nothing of it here, but refer the reader to it. It will also be found declared in that book, in what manner his lordship was prosecuted in the House of Commons upon account of this judgment of his; and therefore I shall not make any repetition of it here, but only observe one or two things upon the whole of the prosecution. And, first, that the lords, at a

* A very minute account of the circumstances attending this case may be found in the Examen, (p. 516.) It is also reported, in its various stages, in 2 Levinz, 114; Pollexfen, 470; 1 Freeman, 380, 390, 430; 3 Keble, 365, &c.; 6 Howell's State Trials, 1063. A manuscript report of Sir F. North's argument may be found amongst the Hargrave MSS. in the British Museum, No. 339.

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jocular motion of the Lord Wharton, made holiday of this day of the motion in the House of Commons, which shows that the party, in both houses, were set for the purpose. For if the lords had sat in the morning, the design, to be executed at one o'clock, might have taken wind. 2. That although this stir was made, on his lordship's account, for malice and revenge, or rather, ambition of his place, yet his name was not touched, by any mention, from the beginning to the end. The reason of which was, because his interest and friendships among the best quality were great, and also his character for justice so well known, that, upon a declared personal attack, a fiercer opposition had been made. 3. That a person of a sound and valuable reputation, and esteemed useful to the public, shall have friends unknown appear, in time of need, to assist, and see justice done him. 4. That the sincerity of any business may be known by the means used to accomplish it; for, if either be false and perfidious, the other will be so also; and they counter refer to each other. If a business be bad, honest means will never be used to come at it; and, if tricks and falseness appear in the approaches, the end is the same. 5. That shifts and subterfuges, and clancular compositions, are of the worst consequence to a just magistrate, who is upon his defence; for being discovered, they lose a real

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interest, and, of friends, create enemies, which in those times appeared in divers instances.

After his lordship's death, his judgement confirmed in the House of Lords.

I shall not be just to his lordship's memory, if I do not subjoin the rest of this prosecution, which, after his death, was resumed, and with what design it was carried on. Upon the Revolution, divers persons, who had suffered for their crimes in the foregoing reigns, thought that an opportunity was fallen in their way to be revenged, and reimbursed their fines, and what else their malice or avarice suggested, not by any slow process of justice, but, by act of parliament, all at once. And how far this design extended, what proffers were made, and how they came off, was a work of another undertaking, (see the Examen); and here I must deal with what concerned only his lordship, whereof this revived case was one. The sheriff Soams had been long dead, and his family so low that nothing was expected to be got from thence; yet Sir Samuel Bernardiston brought a writ of error of this Exchequer chamber judgement into the House of Lords; and there the knight lawed by himself, for no person opposed him, and, upon hearing, the lords, assisted by the judges, confirmed the reversal, which was beside all expectation. Pending this writ of error, his lordship's friends, whom he had intrusted with the affairs of his family, had certain intelligence that the design was (if

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this reversal had been reversed) to have sued to the parliament for an act to pass, for charging the reimbursement of the damages, recovered by Sir Samuel Bernardiston, upon the estate of the Lord Chief Justice North, upon a surmise that his judgement was reversed by reason of his lordship's undue solicitation. And if the lords had set aside the reversal as illegal, who would doubt of the rest? At least a vote would put it out of doubt. It was a most incredible surmise that his lordship, who was known to be a strict observer of the rules and decorum of a judge, and never would bear with any undue solicitation to himself in matters depending, should so criminally, as they would have presumed, solicit other judges in that manner. But corrupt interest and faction will presume, and having power, perpetrate any thing, though never so false, to serve the turn.

His lordship's argument printed, and a scandal suppressed.

While this dernier writ of error hung in the House of Lords undetermined, his lordship's said friends were solicitous how to behave themselves. For, after they knew that the shot was made at them, it was not advisable to make any appearance, or pretence to defend; for that would have had an evil construction. And they durst not so much as speak to any of the judges, or lords, for the like reason: and negative errors being best, not knowing what to do, they did nothing at all. At length one of them leaned against the

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stall of Fox the bookseller, not a little pensive; and Fox leaned over, and "Sir," said he, "there is much discourse of a case between Soams and Bernardiston, judged by the Lord Keeper North. I have a copy of his lordship's argument, and, with your leave, I will print it; and, perhaps, it may do some service." The hint instantly took place; and, leave being given, it was printed and published, very fair and well; and, coming among the lords, it discharged the prejudices the cause lay under, and prepared them to admit the reasons the judges gave in the House, and also to create some favour to the oppressed: and so ended this long tale. But, by way of remark, to show how faction will get the better of common sense and truth, even in men great pretenders to both, I must add that Pollexfen, an arguer for Sir Samuel Bernardiston, since the Revolution, published (or fitted for the press) a book of reports, as they are called, consisting, chiefly, of his factious arguments; and particularly in this case: but most brazenly and untruly, in his preface, tells "how he had carried the cause, if the Lord Chief Justice North had not solicited the judges to give a contrary judgement;" or to that effect. This book and preface was shown to the then Lord Chief Justice Holt, who did a singular piece of justice to his lordship's memory and honour; for he sent for the bookseller to answer it before

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him, and had suppressed the book, if he had not promised to change the preface, and leave out that scandal: which was done; but some copies had escaped before.

Note upon the design of the faction after the Revolution, wit regard to his lordship.

The reader will also find, in the aforesaid Examen, a particular account of the designs of some gentlemen, that had been of the faction in King Charles the Second's time, after the Revolution, to charge the fines of the rioters, by act of parliament, upon the estates of some particular persons, of whom his lordship was one; and how it was frustrated, and came to nothing: so I shall let that pass, and observe only that his lordship's friends were the less surprised at this attack, and others of like nature threatened, by reason of advice they had from Holland, that the common discourse of the fugitives, and others of the party there, was of their firm purpose to take away the estates of the Tories, by act of parliament. But the times fell into such a thorough settlement, that such injustice was not encouraged. How they would have used his lordship, if he had lived, I cannot say; bad enough, if some had had their wills. We were informed that, in the House, upon mention of the state and city affairs, divers members were pleased to name him, and made sharp closes to the prejudice of his name and family. But there were always some, especially of the Western gentlemen, who, interposing, screened

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both. Therefore, as it is a hard case that an upright magistrate should ever be so exposed, so it is a comfort that his sincerity will create friends who, unasked, will show themselves in his favour: whereby the old saying is verified, viz. "Honesty is the best policy."

Account of the case of Cuts and Pickering.

This is one of those capital causes, in which his lordship's singular application and sagacity appeared: but I shall give an account of one more, which I think will fully answer my design. And that was the cause of Cuts and Pickering.* Sir John Cuts, of Childersly in Cambridgeshire, had an aunt, one Mrs. Weld, who married Mr. Pickering, and, by his will, gave her an estate called Drayton, value 300*l.* per annum, for ninety-nine years, "if she should so long live." Mr. Pickering, desiring not to hang upon the thread of his wife's life for such an estate, but to have it, for the term, absolute, which is very near equal to the inheritance, thought fit to erase, from the will these words of reference to her life. He had opportunity to do it; for he was made executor, and accordingly had the will in his keeping; which, in his good time, was proved and lodged in the prerogative office. The relations that were the heirs and devisees of the capital estate, and (among other things) of this (sub-

* Reported briefly in 1 Ventris 197, 3 Keb. 2.

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ject to Mrs. Pickering's life) were minors, and their affairs managed by their mother. I think the eldest of these, not long since, was made a peer, and was called my Lord Cuts.* But his lordship's first acquaintance with the family went no farther than Sir John Cuts, and this Mr. Pickering and his wife. He was a subtile fellow, money-hunter, but a great trifler, and very avaricious; but withal a mighty pretender to puritanism, and seeming to be more godly than other men. He used to frequent the Rolls chapel, and most busily write the sermon in his hat, "that he might not be seen." And he used to visit the Lord Chief Justice Hales; and by canting had persuaded him he was a most religious man. He was not without suspicion that some suits might be stirred, by the Cuts's against him, upon this will; and much dreaded a discovery of this rasure, (a guilty conscience needs no accuser): he was almost continually upon the watch, at the Temple and among the lawyers; sometimes with one, and then with another, eaves-dropping for intelligence, but dropping no money; and for a whole term almost every day, at one time or other, he called upon his cousin North (there was some relation, but remote, between him and Pickering's wife),

* General John Cutts created Dec. 6, 1690, Baron Cutts of Gowran, in the kingdom of Ireland. The husband of the beautiful Lady Cutts. (*Noble's Granger*, vol. i. p. 371.)

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thinking himself to be thereby privileged to be impertinent with his importune questions whenever he pleased. He never had the civility to offer a fee, or to ask his lordship to be of counsel with him in general, or particular, or on any account whatsoever. I remember one night his lordship came out from his study, having just parted from him, in a great pet, wishing heartily that his adversaries would come and retain him, that he might shake off so troublesome a fellow; and the next day Mrs. Cuts came, with much apology for her presumption in tendering a retainer in her cause against Mr. Pickering, fearing he might be under engagements to him. His lordship told her no, and took her fee, and wrote her down in his book of retainers, so she went away satisfied: and well she might, for that minute's work saved the estate. Pickering, that dogged this gentlewoman to see where she went, perceived her go up to and return from his cousin North's chamber; and then he concluded she was in earnest, and up he goes, and offers his retaining fee; "no," his lordship told him, "he was already retained on the other side," and showed him his book. His discourse upon the matter signified nothing; he must have patience, and provide himself elsewhere. He might repent his neglect, but it was too late.

Discovery of a rasure.

After this Mrs. Cuts came to his lordship in a very great concern, saying she had very credible

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information that there was a foul rasure in Sir John Cuts's will, that in consequence lost Drayton, after Mrs. Pickering's death, from her (Mrs. Cuts's) children. His lordship immediately took coach, and went to Doctors' Commons to view the original will. There he found the rasure most evident, and not done so carefully, but by the bottoms and tops of the long letters, and the distances that determined the intermediate ones, the words, *if she should so long live*, might be read. Thereupon he took a paper, and made what they call a fac-simile of the marks and distances of those small specks as were not scraped out. Then his lordship called the officers, and showed them the rasure and the marks, with the resemblance he had made of them, and charged them all to take care that none should see the will but in the presence of an officer, for there would be a suit at law, to be determined upon view of that rasure. This matter being fixed, the lady went into Chancery, and having filed her bill for a discovery, Pickering answers fully, and denies the rasure, and at the hearing a trial was directed to be had, to find if this rasure was since the publication, and by whom. The cause came to be tried at the King's Bench bar, before the Lord Chief Justice Hales, and the rest of the justices of that bench, and his lordship managed in chief for the Cuts's.

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A trial at bar thereon.

It was then believed that Pickering had found means to insinuate to the Chief Justice, that this was a malicious prosecution, and raised up against him by a pert young lawyer, of a different persuasion and tendency from him, but that he himself was innocent; but, however it happened, the chief justice took in violently on the side of Pickering, assuredly believing better of him than he deserved. It is always a hard cause upon a lawyer, when he is to manage against the prejudice of a court, for what is to be said or done, when presumptions pass on the one side, and the other side is held to positive proof, and no less than demonstration? The chief justice was so very hard upon his lordship and his cause, that if there had not been an uncontrollable evidence of the fraud, the cause had miscarried. But it happened that as his lordship upon the bench was going to direct the jury (as every one expected) to acquit Pickering, one of the counsel mentioned another witness they had to prove Pickering's own confession, that when the will was first opened, those words were in. The witness came in, and swore it positively. "Well," said the chief, "now you shall hear what Mr. Pickering will say to that." He thereupon being called came down into the court, and stood directly opposite to the witness that confronted him. "Now what say you to this?" said the chief. "My lord," said he, "I was not bound to say what the truth

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was to him." There was an instance of the value of face to face. The answer was so knavish and silly withal, that the chief justice let fall his countenance, and knocking his stick, left the cause to the jury's cognisance, without a word of direction given them one way or other; and they without going from the bar, found Pickering author of the rasure since the will published. Such cutting discoveries knaves will make of themselves, when surprised and not allowed time to dress up their answers in the best accoutrements, especially before sagacious men. And none was ever more so than that famous chief justice, who although subject, as most mortal men are, to prejudices, yet upon a clear conviction, sacrificed his proposition to truth.

The Lord Chief Justice Hales, his great learning, failings, and the respect toward his lordship.

It was the Lord Keeper North's good fortune to enter his practice in the circuits under this judge, whose reputation for his great ability in the law, and rigorous justice, will be very long-lived in Westminster Hall, and the Inns of Court and Chancery; for there was a conjunction of characters; his and the times conspiring to aggrandize it. After having improved his knowledge, as a student, by reporting from him when he sat as judge of the Common Pleas, and as a practiser in the Northern circuits, it so happened that, in the unaccountable rolling of preferments in the law, it became his lordship's province to judge of, and,

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for cause apparent, to correct the errors of that great man. The truth is, his lordship took early into a course diametrically opposite to that approved by Hales: for the principles of the former, being demagogical, could not allow much favour to one who rose a monarchist declared. Then, after the latter, by being made Chief Justice of the Common Pleas, together with the other judges of that court, and those of the Exchequer, had jurisdiction of errors in judgment given by the court of King's Bench, the separation was wider; and the old judge, by a certain formal overlooking of him, and refining of arguments against all he appeared for, affected to show it. And to say truth, that judge had acquired an authority so transcendent, that his opinions were, by most lawyers and others, thought incontestable; and he was habituated in not bearing contradiction, and had no value for any person whatever that did not subscribe to him. His lordship knew him perfectly well, and revered him for his great learning in the history, law, and records of the English constitution. I have heard him say that, while Hales was chief baron of the Exchequer, by means of his great learning, even against his inclination, he did the crown more justice in that court, than any others in his place had done with all their good

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will and less knowledge. But his lordship knew also his foible, which was leaning towards the popular; yet, when he knew the law was for the king (as well he might, being acquainted with all the records of the court, to which men of the law are commonly strangers), he failed not to judge accordingly.

His manner of behaviour at trials.

He was an upright judge, if taken within himself; and when he appeared, as he often did, and really was, partial, his inclination or prejudice, insensibly to himself, drew his judgment aside. His bias lay strangely for, and against, characters and denominations; and sometimes, the very habits of persons. If one party was a courtier, and well dressed, and the other a sort of puritan, with a black cap and plain clothes, he insensibly thought the justice of the cause with the latter. If the dissenting, or anti-court party was at the back of a cause, he was very seldom impartial; and the loyalists had always a great disadvantage before him. And he ever sat hard upon his lordship, in his practice, in causes of that nature, as may be observed in the cases of Cuts and Pickering, just before, and of Soams and Bernardiston elsewhere related. It is said he was once caught. A courtier, who had a cause to be tried before him, got one to go to him, as from the king, to speak for favour to his adversary, and so carried his point;

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for the chief justice could not think any person to be in the right, that came so unduly recommended.

His excellent expression and seeming courage, that is, as to the court, but popularly timid.

He became the cushion exceedingly well: his manner of hearing patient, his directions pertinent, and his discourses copious, and, although he hesitated often, fluent. His stop, for a word, by the produce, always paid for the delay; and, on some occasions, he would utter sentences heroic. One of the bankers, a courtier, by name Sir Robert Viner, when he was Lord Mayor of London, delayed making a return to a mandamus, and the prosecutor moved for an attachment against him.* The recorder Howel appeared; and to avert the rule for an attachment, alleged the greatness of his magistracy; and the disorder that might happen in the city, if the mayor were imprisoned. The chief justice put his thumbs in his girdle, as his way was, and, "Tell me of the mayor of London?" said he; "tell me of the mayor of Queenborough:" but still this was against the court: he put on the show of much valour, as if the danger seemed to lie on that side, from whence either loss of his place (of which he really made no great account) or some more violent, or, as they pretended, arbitrary infliction might fall upon him. Whereas, in truth, that side was safe, which he

* This transaction arose out of the case of Emerton v. Hyde, mentioned *post*, p. 128.

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must needs know, and that all real danger to a judge was from the impetuous fury of a rabble, who have as little sense and discretion as justice; and from the House of Commons, who seldom want their wills, and, for the most part, with the power of the crown, obtain them. Against these powers he was very fearful; and one bred, as he was, in the rebellious times, when the government, at best, was but rout and riot, either of rabble committees, or soldiers, may be allowed to have an idea of their tyranny, and consequently stand in fear of such brutish violence and injustice as they committed. But it is pleasant to consider that this man's not fearing the court was accounted valour; that is by the populace, who never accounted his fear of themselves to have been a mere timidity.

Taken out of the law, an empty pretender, and by severities unfortunate in his children.

Whatever his courage or fear was, it is most certain his vanity was excessive; which grew out of a self-conversation, and being little abroad. But when he was off from the seat of justice, and at home, his conversation was with none but flatterers. He was allowed on all hands to be the most profound lawyer of his time; and he knew it: but that did not serve him; but he would be also a profound philosopher, naturalist, poet, and divine, and measured his abilities in all these by the scale of his learning in the law, which he knew how to value; and if he postponed any, it was the law to

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all the rest; for he was so bizarr in his dispositions, that he almost suppressed his collections and writings of the law; which were a treasure, and, being published, would have been a monument of him beyond the power of marble. But, instead of that, he ordered them to be locked up in Lincoln's Inn library; and made no scruple to send forth little tracts in philosophy, as the Non-gravitation of fluids, *Difficiles Nugæ*, prosecuting the same *nugæ*, or trifles, upon the baroscope; which made Sir William Jones say that his whole life (meaning in private, as I suppose) was *nugarum plena*, or made up of trifles: his "Origination of Mankind," in appearance, a great work, with nothing in it, and that which scarce any one ever read or will read.* And what is very remarkable, the very childish ignorance of his subject,

* The work which is here characterized as one "which scarce any one ever read or will read, and which shows a childish ignorance of the subject," is, according to Burnet, "generally acknowledged to be one of the perfectest pieces of learning and reasoning that has been writ on that subject." (*Life of Sir Matthew Hale*, p. 42.) The same writer relates a curious anecdote of Hale's sending this treatise anonymously to Bishop Wilkins, by whom it was communicated to Dr. Tillotson, who rightly conjectured the author to be Sir Matthew Hale. The two divines accordingly waited upon him, "and the Bishop thanking him for the entertainment he had received from his works, he blushed extremely, not without some displeasure, apprehending that the person he

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showed in these books, is dressed in most accurate method, proper expression, and significant English style, better than which one would not desire to meet with as a temptation to read. He published much in speculative devotion, part prose, part verse: and the latter hobbled so near the style of the other, as to be distinguished chiefly by being worse. But his matter, and language not in rhyme, was pious and good. He took a fancy to be like Pomponius Atticus, or one that kept above water in all times, and well esteemed by all parties. He published a short account of that noble Roman's life, and, at the entrance, a translation of the same in Cornelius Nepos; but so ill done as would have brought the rod over the back of a schoolboy. A hard censure without proof: Therefore take the following instances. 1.—*Et elatus est in lecticulâ;* which means that (after he was dead) "he was carried out upon a bier." The word *efferre* is peculiarly proper in that place. But he rendered it "he was lifted up in his bed." Then, 2.—*Et sic globus iste consensi-*

had trusted had discovered him. But the Bishop soon cleared that, and told him he had discovered himself, for the learning of that book was so various that none but he could be the author of it." Dr. Birch also, in his Life of Tillotson (p. 48), has borne testimony to the merits of this work, which, he observes, "shows great force of reasoning and an equal compass of knowledge."

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onis, dissensione unius hominis, disjectus est. That is, "and so that confederated party was broke by one man's leaving them." But he,—"and so that ball of contention, by the dissent of one man, was let fall." So miserably will the learnedest men err that presume out of their sphere, and fail in that great point of wisdom, the knowing one's self. This great man was most unfortunate in his family; for he married his own servant maid, and then, for excuse, said there was no wisdom below the girdle.* All his sons died in the sink of lewdness and debauchery; and if he was to blame in their education, it was by too much of rigour rather than of liberty; which (rigour), Montaigne says, seldom fails of that consequence. Although he was very grave in his own person, he loved the most bizarr and irregular wits, in the practice of the law before him, most extravagantly. And besides he was the most flatterable creature that ever was known; for there was a method of resignation to him, and treating him

* His first wife was Anne, daughter of Sir Henry Moore, of Faly in Berkshire. "His second wife," says Burnet, "was Anne the daughter of Mr. Joseph Bishop, of Faly, in Berkshire, by whom he had no children. He gives her a great character in his will as a most dutiful, faithful, and loving wife, and therefore trusted the breeding of his grandchildren to her care, and left her one of his executors." (*Life of Hale*, p. 92.)

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with little meals, and private, with his pipe, at ease, which certainly captivated him. So Sir George Jeffries gained as great an ascendant, in practice, over him as ever counsel had over a judge. In short, to give every one his due, there was in him the most of learning and wisdom, joined with ignorance and folly, that ever was known to coincide in the character of any one man in the world.

His justice was most in small, and his arbitrariness in great things. His extravagant authority caused his lordship's notes of him.

His lordship of whom I write, by his extent of bar practice, while he stood in the front, on the one side or the other, in most or rather every great cause that moved in Westminster hall; had a full view of this great man, and very often observing him a slave to prejudice, a subtilizer, and inventor of unheard-of distinctions, and exercising criticisms to get the better of known maxims of the law, and thereby to transmit great estates and interests from some persons and families to others, and knowing well these infirmities of his, was not moved at all at what he did. And this overruling temper of his did not so much take place in small concerns, and in those between common men; for there his justice shined most, and armed him with reputation that sustained his authority to do as he pleased in greater. Whereby it seems that if he never had dealt in other but great causes, to hear and determine them, he might have been accounted the worst judge that

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ever sat. But although his lordship was not surprised at this behaviour of the chief justice, yet he was very much concerned to see the generality, both gentle and simple, lawyers and laymen, idolize him, as if there had never been such a miracle of justice since Adam. His voice was oracular, and his person little less than adored. And his lordship knew also that this fascination proceeded from faction, and had at the root more of confederacy than judgment; for, because the chief justice was, in principle, averse to monarchy and the court, they all with one voice exalted him, in order to have him lead the law and all the lawyers that way, and left no room for just thoughts of him, which attributed enough of honour and commendation; but all that he said was right, and whoever said to the contrary was wrong. In opposition to this impetuous, or rather rage of reputation (under which his lordship himself was a sufferer, as may be seen elsewhere) his lordship thought fit to note down the several instances in his own observation of this judge's fondness and partiality; which he intended to have explained at large; when he was at leisure, and should have had a disposition so to do. These notes are come to my hand, and being willing to declare the scope of them as well as I can, I will pass them one by one, as follows.

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"Nosworthy *versus* Basset. Trials directed "with all art and care, yet slighted." Nosworthy *versus* Basset. Trials slighted when not for his turn.

It is usual in dark matters of fact, to refer them to trials at common law, and a verdict upon one trial, is always allowed to be given in for good evidence upon any other trial of the same fact. Nosworthy had married a daughter of Serjeant Maynard, who urged very hard against Sir William Basset, an old cavalier or loyalist. There lay the characteristic. Care was taken to settle the issues for two trials successive, and with all the art that might be, to give Nosworthy the advantage. If either of them had taken accordingly on his side, there was no doubt but the authority of them had been great in the consequence of future proceedings; but it happened that both went for Basset. Notwithstanding that, another trial was directed to be at the bar, before Hales himself; and when the authority of two verdicts was alleged, he slighted, and had no regard to them.*

"Hyde *versus* Emerton, marriage affectedly "tried to prejudice an odious cause against right." Strove to prejudice an ecclesiastical cause by a temporal trial.

* See this case reported in its various stages in 3 Mod. 203. 1 Show. 537. 2 Salk. 592. Hard. 375. The form of the action was Ejectment, and therefore the observation in the text, that "a verdict upon one trial is always allowed to be given in for good evidence upon any other trial of the same fact," is inapplicable.

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The principal depended in the court of the arches in a trial of marriage. And the question was whether the son of the Lord Treasurer Danby, or Mr. Emerton, a sort of dissenter, was married to Mrs. Hyde. The cause was wholly ecclesiastical, and from the arches must (upon appeal) go to the delegates, and could by no possibility be drawn from that jurisdiction to the common law, and all titles whatever under that marriage, must (even at common law) stand and fall by the sentence in the ecclesiastical court. Emerton was advised to bring an ejectment for the lady's land, and to get that cause tried at the bar before Hales. It was alleged in delay of the trial, that the right of the marriage depended in the arches, and till sentence the right could not appear at law; for that court was decisive. The matter of delays in the arches was stood upon as a reason to proceed, and however answered upon the necessity by their course and rules, it passed, and the trial went on. And it was managed by Hales with frequent exclamations at the clearness of Emerton's title, and proof of the marriage. The pinch was that, by the matrimonial law, fathers and mothers are not witnesses to matches for preferment of children; but the common law allowed them: and in that lay the clearness.* But it

* This case is shortly reported in Keble's Reports, vol. iii. p. 447. See also Stillingfleet's Discourse at the Meeting

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was thought that such a trial, carried with the opinion of so popular a judge, would awe the ecclesiastical court, and so be of service towards the sustaining a cause grounded upon a very odious practice of Emerton to gain that lady. The characteristic of this cause was evident enough; and so it was in the case of Soams and Bernardiston; see the Examen. In that, Hales said he would not try the cause before the House of Commons had decided the right; but there the reason lay counter, as was showed in that book.

"Case of Mildenhall Encount: act of parliament; otherwise in the case of the London judicatory."

Case of Mildenhall, sided with the populace against the lord.

I cannot well make out this comparison; but only remember that the Mildenhall case was upon the title of Sir Henry North,* lord of the manor, and a cavalier, against the populace of the town, touching a right to an allotment upon the division of the common fens; the townsmen distinguished it from common, by calling it their *sola et separalis pastura*. It was tried before Hales in the

of the delegates." (*Discourses*, p. 79.) It was undoubtedly the duty of Hale to suffer the cause to proceed, and to receive the evidence of those witnesses who were admissible by the rules of the common law.

* See the case of Potter *v.* North, reported in, *Saund.* 347, 1 *Vent.* 383.

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Exchequer; and in that case, he did not allow the sentence of the commissioners to be conclusive; but upon the London commission of settling rights after the fire, he ruled it was so, though both stood on equal height, viz. the act of parliament. That, as I take it, is the inconsistency here noted. But to do him right, though he leaned as much as he could to end the cause with advantage on the popular side, he never would say that such a custom to exclude the lord, who had no profit otherwise, was good in law; but rather the contrary. But here the lord of the manor had no benefit of his opinion; but for fear of worse, was constrained to go off upon a reference; for the ill consequence, by offending if he refused, made the compliance necessary.

Ac etiams, law in B. R. but not in C. B.

"*Ac etiams*, in the Common Pleas, condemned, "when used in the King's Bench, and the case "but altered."

The secret of this matter depends on the history of the two courts, the King's Bench and Common Pleas, striving for jurisdiction, or rather increase of business; which will be found more largely treated of elsewhere. The court of Common Pleas had been outwitted by the King's Bench, till his lordship came upon the cushion; and that by an artifice in process called *ac etiams*. His lordship used the same artifice in the process of his court, where it was as good law as above.

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But Hales exclaimed against it, and called it altering the process of law; which very same thing his own court had done, and continued to do every day.

" That juries cannot be fined for slighting evi- Against fining of
" dence, and directions, contrary to reason, and juries,
" the whole course of precedents." against all precedents.

This was popular, and the law stands so settled.* The matter is trust; whether the court or the jury. The court may abuse a trust in an undue punishment of jurymen, as in any other act of justice; and, on the other side, juries may abuse their trust; as, soon after, was done with a vengeance, in the scandalous instances of ignoramus juries. The precedents run all for the trust on the side of the court: what reason to change it (which was changing the law) but popularity?

" Foster *versus* Ramsay, against Lord ——
" upon a metaphysical notion, hard to the party
" that lost it."

This matter is somewhat dark to me, but if the case be any way reported,† it may be cleared. I think the cause went against the Duke of Lauderdale, his majesty's most loyal and wise com-

* See Bushell's case, *Vaughan's Reports*, p. 135. *Howell's State Trials*, vol. vi. p. 999.

† It is reported in *Ventris*, vol. i. p. 413, under the name of Collingwood *v.* Pace, and in several other reports of the time.

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missioner of Scotland; where, upon a point of descent, the Lord Chief Baron Hales distinguished away a right by descent, which had been settled by express judgment of law, by the invention of a *mesium differens*, a chimera to serve a turn, without reason or authority to warrant it, and never heard of in the law before.

Affected applause of an evidence, before the other side heard.

"The case of the Lord Fitzwalter, *pro* Burnham "*versus* Touts." *

This was a trial for a several fishing of the river Burnham in Essex, which had been taken to have been a common fishing; but it was the title of the Lord Fitzwalter, whose name was Mildmay, a characteristic in Essex. The counsel for that lord made a long deduction of evidence by offices *post mortem*, charters, pedigrees, and divers matters of record. When they had done, the Lord Chief Justice Hales, who carefully went along with them from point to point of the evidence, instead of calling on the other side to give an answer, fell to eulogising the evidence given, calling it over and over a noble evidence. This his lordship thought not the office of a judge, to commend an evidence before the other party was heard. It gave a prejudice with the jury; and what matter was it to the right, whether the evidence were noble or not? The countrymen, on

* Reported 3 *Keb.* 242. 2 *Lev.* 139. 1 *Mod.* 105.

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the other side, by an ignoble prescription, might have a better title.

" Case of Sir William Drake, presumptions, " very strong evidence prevailed till deed found, " then deed prevailed, Earl of Peterborough had " not that good fortune." Presumptions for Sir William Drake, but not for Peterborough.

I have no report, and cannot account for Drake's case. But remember a trial at the King's Bench bar, between the Lord Peterborough and his brother the Lord Mordaunt, before the Lord Chief Justice Hales.* The earl's title depended on a deed, of which only a copy could be produced, but it was very strongly to be presumed to be a true copy, for it had been delivered out to be perused by counsel, and admitted on all hands to be a true copy; and this long before any such question, as at the bar, could be dreamt of, above thirty years before; and it had remained in the gentlemen's hands ever since, as it was showed, and unaltered. One would think, after such length of time and other circumstances, this might have been admitted as evidence of the deed: no, it was not proved expressly to have been examined with the original. But it seems in Drake's case, presumptions, or less evidence, in case the deed had never been found, would have done as well.

* Reported 1 *Mod.* 94, 114. 3 *Keb.* 1.

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Countenanced marriages of quakers.

"Marriage of Quakers found specially at "Guildhall."

This was gross in favour of those worst of sectaries;* for if the circumstances of a Quaker's marriage were stated in evidence, there was no colour for a special verdict; for how was a marriage by a layman without the liturgy good within the acts that establish the liturgy? The slur, in such cases, used to be this. In evidence a cohabitation, and owning the children as man and wife, passeth without entering into the question of the right, that properly belongs to another jurisdiction. But here, though the right was debated, and could not be determined for the Quakers, yet a special verdict upon no point, served to baffle the party, that would take advantage of the nullity.

Soams and Bernardiston tried at table, and they not answering, slighted.

"Soams *versus* Bernardiston, opinion asked; "but when he could not govern according to his "will, slighted, and went on."

This relates to his making that trial a table

* "A Quaker being sued for his wife's debts while sole, insisted that his marriage was not legal, not being according to the rules of the church of England; but Hale declared "that he was not willing on his own opinion to make their children bastards, and gave directions to the jury to find it special;" as he had undoubtedly a right to do. "He thought all marriages made according to the several persuasions of men, ought to have their effects in law." (*Life by Burnet*, p. 70.)

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case in Serjeant's-Inn hall. The manner of it was this. When Mr. Attorney North moved to arrest the judgment against Bernardiston, with a vigour that needed some aid to repel, Hales, who was sensible that the objections were weighty, had a mind to implant his notions in the rest of the judges, before whom it was possible the cause might come, by writ of error, to be determined anew; for he could least of any thing bear that his judgment should not prevail. And one day at dinner, when the cause was adjourned in Serjeant's-Inn hall, he put this case to his brethren the judges and serjeants present, and, as his way was, to his questions he annexed his reasons before he took their answer; for those reasons might possibly lead them into his opinion: and then his sentence in court had been adorned with the adjunct of the opinions of the serjeants' bench; to whom (as sometimes is done) the case had been put. But, upon the proof, divers of the other judges and serjeants were of an opinion different from his, and some doubted, and thought it a case that deserved to be better considered, and very few were clear with him. Upon this disappointment he thought fit to slight them all, and made no more words about it. Else their opinions had been quoted in court, or at least, put under a prejudice against a writ of error should come; of which Hales had a prophetic foresight.

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Against the king's printers, for law books; set right in the House of Lords.

"Atkins's case, whether a privilege the king "had enjoyed for a hundred years, were a mono- "poly. Reversed by parliament, and liberty of "arguing denied."

This was the case of the law patent, by which the king's patentees claimed the sole printing of law books. This was by Hales adjudged a monopoly. But upon a writ of error brought in parliament, the lords reversed the judgment, without solemn argument. I remember, about that time it was commonly said in Westminster Hall, that the best reason the judges had to make that patent a monopoly, was that they might have the benefit of printing their own reports. *

Disallowed Serjeant Scroggs the privilege of the Common Pleas.

"Scroggs's case of serjeants in Common "Pleas." †

Sir William Scroggs, when he was a practising serjeant, was arrested by a King's Bench process, and he pleaded his privilege as a serjeant at law attendant on the Common Pleas, to be sued only in that court, and by bill, and not *capias*, as officers of the court are proceeded against. But

* Upon the subject of the king's prerogative to grant the exclusive privilege of printing certain books, see the cases collected in *Viner's Abridgement, Prerogative,* (D. c. 2,) and the case of the Stationers' Company *v* Carnan, in *Sir W. Blackstone's Reports,* 1004. The decisions on this subject during the reign of Charles II. throw considerable light upon the character and bias of the courts of justice at that period.

† Reported in *Freeman's Reports,* vol. i. p. 389.

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Hales disallowed it; and it was thought very injurious to the coif, and against all authority of precedent and usage.

"Success of applications, on the contrary "party." Imposed upon by a trick.

This was touched before; and was when a courtier carried his cause by getting one, as from the king, to speak to Hales as for his adversary.*

Here I have done with this very great lawyer, the Lord Chief Justice Hales. And I must not part without subjoining my solemn protestation, that nothing is here set down for any invidious purposes, but merely for the sake of truth; first, in general, for all truth is profitable; and, secondly, in particular, for justice to the character I write of, against whom never any thing was urged so peremptorily as the authority of Hales, as if one must of necessity be in the wrong, because another was presumed to be in the right. These two chiefs were of different opinions in matters of private right, as well as touching the public. And if one were a Solomon, saint, and oracle, what must the other be taken for? Therefore I have understood it absolutely necessary for me, as (assisted with his lordship's own notes) I have done, to show Hales in a truer light than when the

Protestation of the truth, and the necessity of the subject, and no envy.

* *Ante* p. 119.

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age did not allow such freedom, but accounted it a delirium or malignancy at least, not to idolize him; and thereby to manifest that he had his frailties, defects, prejudices, and vanities, as well as excellencies, and that he was not a very touchstone of law, probity, justice, and public spirit, as in his own time he was accounted; but that some, that did not agree with him, might have those virtues as eminently in the eye of a just observer. This is the only consideration that moved me so freely to display the matters aforegoing, wishing only that I had means or ability of doing it with more punctuality. I conclude with this observation, that it is a general error of the community, learned and unlearned, when a man is truly great in some capacities, by the measure of them to magnify him in all others, wherein he may be a shallow pretender. But it is the office of a just writer of the characters of men to give every one his due, and no more.*

* Notwithstanding the professions of impartiality with which the author has concluded his character of the celebrated man "to whose learning and diligence" (to use the words of Sir William Jones) "the present age is no less indebted, than his contemporaries were to his wisdom and virtue," the hand of an enemy and a partizan is still clearly visible. The dislike with which Roger North viewed the political sentiments of Hale, added to the jealousy with which he regarded him, as the rival and opponent of his brother, totally disqualified him from forming a correct estimate

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I should earlier have mentioned a great piece of service his lordship did to his college, that of St. John's, in Cambridge; whereby they were enabled to recover a considerable estate, which they had laboured in seven years' suit for, and had been always baffled. It happened that when the fellows were about to give up the cause, and to look no more after it, it came into one of their heads to propose they should make one experiment more, which was to consult their little fellow-commoner (as they used to call him), who after a circuit or two, and other dealings in the country, was re-

An estate recovered to St. John's college in Cambridge.

of that virtuous man's character. The legal reader will find some remarks on this subject in *Mr. Hargrave's preface to his Law Tracts*, p. vi.

In another place North has spoken of Hale more respectfully. "I have known the Court of King's Bench sitting every day from eight to twelve, and the Lord Chief Justice Hale's managing matters of law to all imaginable advantage to the students, and in that he took a pleasure or rather pride. He encouraged arguing when it was to the purpose, and used to debate with the counsel, so as the Court might have been taken for an academy of sciences as well as the seat of justice." (*On the Study of the Laws*, p. 32.)

Again, in the Examen, (p. 530), North has mentioned a noble trait in the character of Hale. "The cause was tried at the King's Bench bar, I think twice, but I am sure once, before the Lord Chief Justice Hales, who was a most propitious judge to a poor man's cause. And before him, if any leaning were, it was of his favour to that side that most seemed to be oppressed."

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puted the hopefullest young lawyer in England. This was agreed to, and they went to him. The history of the cause was this. There was a grave old gentleman that had a title to an estate; but it was of that nature, as could only be recovered by a writ of right; and accordingly, by advice of counsel, his writ was sued out and the summons given. The defendant appeared, and pleaded to issue by battle (which law was then, and is yet in force, though obsoleted,) the consequence of which was that the plaintiff must either fight, or find a champion to fight for him, or else his cause would be adjudged against him for his default, and he be barred for ever. The good man was of opinion that it was utterly against the law of God to join, or to hire any one to join, in mortal battle for worldly interests; and so he let his writ go. But in his last will (taking himself to have a right still) he gave the land to St. John's college for ever. And he declared his gift to them to be, in trust and confidence that they would use all their interests and endeavours, to obtain of the parliament a repeal of that ungodly trial by battle. After this will proved and known, the college went to counsel, and proved divers ways of law to come at this estate; but all in vain, as was said before. When they attended his lordship with their compliments of the great assurance of his skill and integrity in advising them, having been educated in

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their college, he told them plainly they had not taken one right step; for as they had proceeded, the law was every way against them. But if they caused an information or bill in Chancery in the name of Mr. Attorney General to be preferred, as for having the benefit of a pious and charitable use (in all which, the crown is interested, and may by the attorney in that manner, call for a due application of it) the court, by virtue of an original jurisdiction of charities, will decree it, and no battle, nor other impedimental forms of law, shall stand against that equity. They took the course he directed, and obtained a decree for the estate, which they hold at this day, and have owned his lordship's good advice to them as the greater benefaction of the two. This counsel now would seem no great reach; because that course is become more frequent: but, before that time it was a learning that lay out of the common road, and had been very rarely practised; and I presume it might be gathered by his lordship, in his dealing under Sir Jeoffry Palmer; for there is little directly in the books tending to it.

A good conveyancer.

I shall recite no more of these particular cases, wherein his lordship signalized himself, but proceed to another head; and that is, conveyancing. I can with assurance say, that he was no less expert, at that sort of practice, than any one of his

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time, although professing no other. And he dispatched a great deal, especially of the most intricate kind, that is, settlements in noble families who entirely relied upon him. And in these are commonly found so many entails, trusts, terms, powers, jointures, rents, &c. that it is very difficult to clear the way to come at a new settlement; and then to compile it so as to answer all the ends and exigences of the families, will always require a workman. But besides his knowledge of the law, gained by reading, he had, as I must always remember, the benefit of many useful notions and hints from Sir Jeoffry Palmer, not one iota of which was lost upon him.

Methods of dispatch.

He had a comprehensive turn of thought and a dexterous application of it to the subject before him; and he always crept as near to the truth of things as was possible; and as he had a great command of language and words, he had also a judgment to choose the most apt and intelligible, and withal a natural clearness of disposition and method; all which, as I said, rendered him a conveyancer inferior to none. At the beginning of his business he had no clerk, and not only drew but ingrossed instruments himself, and, when he was in full practice, he scrupled not to write any thing himself. A lady in Norfolk told me he made up some agreements for her; and, at the sealing, a bond was wanted, and there was no

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attorney, or clerk, at hand to draw it, so they were at a stand: and then he took the pen, and said, "I think it will not foul my fingers if I do it myself;" and thereupon he made the bond, and it was sealed. I have often heard him complain of the community of the conveyancers, and say that some of them were pack-horses, and could not go out of their road. After his bar practice grew up to ingross his whole time, and the business of the crown in Westminster Hall began to lean upon him, he only superintended in the conveyancing province; leaving searches, perusals, and extract-making to others that he thought fit to recommend, and, after he had directed, took the finishing to himself. By this way of committing clients to certain practisers, on whom he could rely for the working part, he helped them into credit and business; and particularly one Mr. Thomas Syderfin (an author of reports) was introduced, and, under his lordship, and in very important concerns, in some families, relied on.

Character of Mr. Syderfin. A strange misfortune of his widow.

This Mr. Syderfin was a Somersetshire gentleman, and proved a very good lawyer, as the book two volumes in folio of Reports of his shows. But he was not a better lawyer than a kind and good-natured friend; having very good qualities under a rustic behaviour and more uncouth physiognomy. He used at the Temple to be described by his hatchet face, and shoulder of mutton hand,

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and he walked splay, stooping and noddling. His lordship used his conversation chiefly for his assistance in matters of law, wherein he was of great use and service to him. For when his multiplicity of active business would not allow him to consult in cases that he wished well to, as well for friendship and relation as for fees, he usually substituted Mr. Syderfin to consult the books for him, as he himself had done before for Sir Jeoffry Palmer. And this leading the persons concerned to attend him by Mr. Attorney's direction, they, finding him industrious, careful, and learned, continued to use him as their immediate counsel in other smaller concerns, wherein Mr. Attorney was not concerned; which brought him into very considerable business, as well in conveyancing as at the bar. For his probity, and exact justice to his clients, was a great recommendation of him; for he had no tenters to hang their dependences upon, to make them drop fat, as some have had and done. But he died before his friend Mr. Attorney was made the chief of the Common Pleas; else, it is probable he might, by his means, have been taken into the wheel of preferment. The only thing which I ever heard him blamed for, was the marrying a lady, that was his ward, before her minority was expired; which, by the world's allowance, makes her entirely capable to dispose of herself. And it

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seems an ill use made of a trust, and the authority of a guardian, to take advantage of a minor's being a great fortune much above him, and anticipate her free choice, by influencing her to marry him. But the lady had no cause to repent; for he was so good a man, as could not but make her happy; and that probably, young as she was, she was satisfied of, by experience of his general behaviour towards her and others; which might make her determine so early. For she had a very good understanding, and had occasion to serve herself of all her thinking and judgment under an immense misfortune that befel her when she was a widow. For, being a great fortune, one Sarsfield ran away with her, and carried her over into France, where, by the greatest accident, the abuse was discovered, and the raptor seized, she protected, and both sent home; and the former, upon her most ingenious relation of the fact, sworn in a trial at the King's Bench bar, convict and punished.

Assisted a relation.

His lordship, having taken that advanced post, and designing to benefit a relation, (the honourable Roger North,) who was a student in the law, and kept him company, caused his clerk to put into his hands all his draughts, such as he himself had corrected, and after which conveyances had been ingrossed, that, by a perusal of them, he might get some light into the formal skill of con-

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veyancing. And that young gentleman instantly went to work, and first numbered the draughts, and then made an index of all the clauses, referring to that number and folio: so that, in this strict perusal and digestion of the various matters, he acquired, not only a formal style, but also apt precedents, and a competent notion of instruments of all kinds. And to this great condescension was owing that little progress he made, which afterwards served to prepare some matters for his lordship's own perusal and settlement.

Happily corrected his father's settlement and will.

It fell out that his lordship, by a cast of his skill in this kind, prevented his father's being utterly disappointed of the effect intended by his last will: for the good lord had the general notions of the law, as many others have; who nevertheless, coming to the execution of business, blunder most abominably. And it is very strange, but very true, that if a layman (as the lawyers style those not bred to the profession) studies the law never so hard, and pursues in a course of reading and common-placing with all imaginable perseverance, yet he shall be far from competent to judge of, or capable to direct in business. So this good nobleman, intending to give his lady all his personal estate, free from debts and legacies, and to charge those upon his land, and (subject, &c.) to settle it strictly upon his family, had contrived thus. He made his wife his executrix,

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and charged debts and legacies upon the land, and limited it especially on his sons and their issue male successively, without trustees to support, &c. When this was done, he bethought himself that, however in prudence it did not become him to trust his nimble young lawyer to draw his will, and so give him an opportunity to steal in somewhat for himself, unawares to him, yet, after the will was made, he ought not to secrete it from so great a lawyer as he was. And thereupon he sent for him, and, with a speech, let him know that however (for reasons that satisfied himself) he was not consulted in the making his will, yet now he should see it. But he must not expect to alter one tittle or syllable in it; for he had considered it so well that he should not need, if he were disposed to trust, his advice. His lordship perused it over, and his father asked him how he liked it. He answered with a question, whether he intended that Lady North should have any thing of his personal estate, or nothing. "I intend her all, and have," said he, "given it her by making her sole executrix." That was his skill. But the lawyer told him, "That would not do, but only in cases where no debts were: And charging his land did not ease his personal estate, unless it were made an express legacy, with a declaration to exempt it. For the heir had an equity to turn all debts upon the personal

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estate in ease of the land; and the latter should not be charged till the other was exhausted." This was news to the lord, and made him start. Then the lawyer asked farther, if it was his intent that any of his sons might sell his estate, and frustrate their own children, and the rest of his remainders. "No," said he, "I intend none of them shall sell." "But here they may," said the lawyer, "for the remainders to sons, before any born, are contingent; and a feoffment, or fine of the tenant for life, destroys the contingencies, and his estate become a fee simple." These discoveries made such an impression upon the spirits of the old lord, that he said, "Son, you see my intent, go and make it as it should be." Which was done, and, as things fell out in that family, that action of his lordship's was a preservation of the estate, and prevented the good old lady from being left destitute; who, otherwise, had been left without a bed to lie on, but what she must have purchased by anticipating her jointure. So it is when men will pursue in professions they were not educated in.

His behaviour while solicitor-general.

We have now from a plain king's counsel, got a solicitor general, who, in some respects, is co-ordinate with the attorney, that is in drawing up and passing royal grants, which are to go to the great seal. As to patents of honour, indeed, those are, as I take it, claimed by the attorney, to

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pass only by him; but, else, the signet warrant may go to the solicitor as well as the attorney, as the suitor will please to instance or prevail at the secretary's office. His lordship did not like this competitory business, but secured his share as well as he could, not only by considering well his duty, and the trust of that employment, and what cares belonged to it, but by using Mr. Johnson to be his clerk of the patents, who had done all like business under Sir Jeoffry Palmer: and his reputation and interest brought many patents to the solicitor, which, otherwise, had not come; for he was reputed to have a magazine of the best precedents.

Read publicly upon fines, &c.

During his solicitorship, his lordship kept his public reading in the Temple hall, in the autumnal vacation, in the year ——. He took for his subject the statute of fines, and, under that, found means to exhaust all his learning upon that branch of the law which concerned titles, and the transferring them: and the arguers against him did their parts also, who were the best lawyers of the society in that time. As for the feasting part it was sumptuous, and, in three or four days time, cost one thousand pounds at least.* The grandees of the court dined there, and of the quality

* For an account of the readings and the reader's feasts, see *Dugdale's Origines Juridiciales*, p. 207, and *Herbert's Inns of Court*, 237.

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(as they call it) enough; for his diffused relation, general acquaintance and station, as well as prospect of his advancing in the king's service, made a great rendezvous of all the better sort, then in town, at his feasts.

Manner of the entertainment.

He sent out the officers with white staves (for so the way was) and a long list to invite; but he went himself to wait upon the archbishop of Canterbury, Sheldon; for so also the ceremony required. The archbishop received him very honourably, and would not part with him at the stairs' head, as usually had been done; but, telling him he was no ordinary reader, went down, and did not part till he saw him pass at his outward gate. I cannot much commend the extravagance of the feasting used at these readings; and that of his lordship's was so terrible an example, that I think none hath ventured since to read publicly; but the exercise is turned into a revenue, and a composition is paid into the treasury of the society. Therefore one may say, as was said of Cleomenes, that, in this respect, his lordship was *ultimus heroum*, the last of the heroes. And the profusion of the best provisions, and wine, was to the worst of purposes, debauchery, disorder, tumult, and waste. I will give but one instance; upon the grand day, as it was called, a banquet was provided to be set upon the table, composed of pyramids, and smaller

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services in form. The first pyramid was at least four foot high, with stages one above another. The conveying this up to the table, through a crowd, that were in full purpose to overturn it, was no small work: but, with the friendly assistance of the gentlemen, it was set whole upon the table. But, after it was looked upon a little, all went, hand over head, among the rout in the hall, and, for the more part, was trod under foot. The entertainment, the nobility had out of this, was, after they had tossed away the dishes, a view of the crowd in confusion, wallowing one over another, and contending for a dirty share of it.

The benefit of reading exercises.

It may be said this was for want of order; but, in truth, it was for want of a regular and disciplined guard of soldiers; for nothing less would keep order there. I do not think it was a just regulation, when, for the abuse, they took away such a profitable exercise. But, in England, it is a common way of reforming, even in state matters, instead of amending, or paring away what is amiss, to kick down whole constitutions, all at once, however, in themselves, excellent. Could not the whole proposition of feasting have been laid aside, and nothing but ordinary commons allowed? But, as to the exercise, now it is gone, we can see the want of it; and never more want than now, when statutes of broad influence upon the people's concerns, are so frequently sent out

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from the parliament. It was the design of these readers to explain to the students the constructions that were to be made upon new statutes, for clearing a way that counsel might advise safely upon them. And the method of their reading was to raise all imaginable scruples upon the design, penning, and sense of such new acts as they chose out to read upon, and then to give a careful resolution of them; as we may see done in those readings that are in print. But now there is scarce a lawyer so hardy to advise a client to try a point upon a new statute, whereof the event is at the peril of costs, and sometimes ruin of a poor man that pays for the experiment; for how can the counsel foresee the judge's sentiments? and how contrarient to his advice they may prove? As, for instance, upon the law of distress and sale for rent,* some have said it is to devest property, and, so far, in nature of a penal law, and ought to be construed strictly. Others have said it is a remedial law, and ought to be enlarged by construction. And who doth not know the wide difference in the consequences of law, in some points, upon these various grounds of constructions? Now, if a previous reading had been had upon this statute, saving better judgments, it had been declared a remedial law, and to be con-

* Stat. 2 Will. and Mary, Sess. 1. c. v. s. 2.

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strued in favour of remedy. And, probably, a single judge, at the assizes, would not have opposed his sentiment against the learned determination of a reader, so solemnly and publicly held forth (as, at these exercises, in the inns of court is done), which counsel at the bar, in nice questions at law, are allowed to appeal to for authority. But, as the case is now, till some hardy client hath pushed his point, upon some new provisionary law, to a trial, and obtained a resolution on his side; or else, to his immense costs (which properly converts it to a penal law) finds that he is in the wrong, counsel care not to advise a law-suit, or give a clear or positive opinion in any questionable matter, arising upon such a new law.

Of his lordship's marriage.

It may be wondered at, that, as his lordship was so great a lover of regularity, we hear nothing, all this while, of his matching himself. To that I answer, that no person could be more disposed that way than he was; and it was about this time that he made his first essays towards it; and, for that reason, I think this a proper place to bring forward an account of them, as I intend to do of all his lordship's concerns and reflections, as well of those in which himself alone was interested, as others which might affect and influence the public; such as matching, residences, fortunes, entertainments, reflections, doubts, melancholies, confi-

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dences, with his arts of governing himself and his passions. And although I may by this means introduce many passages, which, to some, may seem of lower importance than what are prôper to have place in a life of so great consequence, yet I am almost of opinion, that most persons will look into such a catalogue as readily as any other in the whole undertaking. If the history of a life hangs altogether upon great importances, such as concern the church and state, and drops the peculiar œconomy and private conduct of the person that gives title to the work, it may be a history, and a very good one; but of any thing rather than of that person's life. Some may think designs, of that nature, to be, like the plots of Mr. Bays, good only to bring in fine things: but a life should be a picture; which cannot be good, if the peculiar features, whereby the subject is distinguished from all others, are left out. Nay, scars and blemishes, as well as beauties, ought to be expressed; otherwise, it is but an outline filled up with lilies and roses. And, to this intent, what I have to produce here, will be found more conducing than all the incidents of state, law, and justice, to be found in the other parts of the work; and that will engage me to be more solicitous and declaratory than elsewhere.

Desired a settlement by a match,

After he was called to the bar, he applied himself closely to the attendance and operations of the

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law, and wanted refreshment, such as was reasonable to be enjoyed at vacant times: and he was weary of being at the loose hand as to company, which he could not have, at all times, to his mind. He was no clubster, listed among good fellows; and often passed his evenings in walking, or solitary (if it may be so termed, when he had only me with him) rather than join in any promiscuous society, or of such as were not either in his friendship, or distinguished by some notable talents that recommended them. And he thought it would be an ease to his mind to know continually, after his business done, what was to become of him; and that he thought best provided for by a family and housekeeping; which is never well settled without a mistress, as well as a master of a family. These considerations inclined him to look out for a suitable match. And, to say truth, his constitution required it as much as any man's whatever; but, being excessive modest, and by resolution virtuous, he was solicitous and ardent in the pursuit of it, and not a little encouraged by a manifest feeling he had of success in his profession, which dismissed all fears of the lean wolf. And not being insensible of a fair character in general, which, together with some quality and happy relation that fell to his share, he fancied he might pretend to as good a fortune in a match, as many others had found, who had less reason to

and the inducements.

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expect it; but without some advancement in that way, he was not disposed to engage himself.

A match proposed, but without success.

That, which sat hardest upon his spirits, was, how he should give a fair answer to the question, "What jointure and settlement?" He used to own but one rood of ground in the world, that yielded him any profit, which was Westminster Hall: a meagre particular, unless he might have added, as Finch did, his bar gown 20,000*l*. There came to him a recommendation of a lady, who was an only daughter of an old usurer of Gray's Inn, supposed to be a good fortune in present, for her father was rich; but, after his death, to become worth nobody could tell what. His lordship got a sight of the lady, and did not dislike her: thereupon he made the old man a visit, and a proposal of himself to marry his daughter. There appeared no symptoms of discouragement; but only the old gentleman asked him what estate his father intended to settle upon him for present maintenance, jointure, and provision for children. This was an inauspicious question; for it was plain that the family had not estate enough for a lordship, and none would be to spare for him. Therefore he said to his worship only, "That when he would be pleased to declare what portion he intended to give his daughter, he would write to his father, and make him acquainted with his answer." And so they parted, and his lordship was glad of his

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escape, and resolved to give that affair a final discharge, and never to come near the terrible old fellow any more. His lordship had, at that time, a stout heart, and could not digest the being so slighted; as if, in his present state, a profitable profession, and future hopes, were of no account. If he had had a real estate to settle, he should not have stooped so low as to match with his daughter: and thenceforward despised his alliance.

Courted a widow, and was little better than jilted.

His lordship's next amour was, in all respects, better grounded; but, against all sense, reason, and obligation, proved unsuccessful. When Mr. Edward Palmer, his lordship's most intimate and dear friend, died, he left a flourishing widow, and very rich. The attorney general, and all his family, had projected a match of their cousin North with this lady, who were no strangers to each other: nor was there wanting sufficient advices, or rather importunities, of the whole family, for her to accept him; against which she did not seem to reluct, but held herself very reserved. In the mean time, his lordship was excited to make his application; which he had never done, or, at least, not persisted so long as he did, but out of respect and compliance with the sense of that worthy family, which continually encouraged him to proceed. Never was lady more closely besieged with wooers: she had no less than five younger brothers sat down before her at one

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time; and she held them in hand, as they say, giving no definitive answer to any one of them, till she cut the thread, and, after a clancular proceeding, and match with a jolly knight of a good estate, she dropped them all at once, and so did herself and them justice. There were many comical passages in this wooing, which his lordship, without much pleasantry, used to remember; and, however fit for a stage, would not muster well in an historical relation; for which reason, as his lordship was dropped, I drop them. The unhappiness was, that he never could find out her resolution as to him; for she stood in some awe of Sir Jeoffry Palmer's family, and would not break with them, till she had provided for herself another interest; and his lordship would not slight their excessive kindness to him, by deserting his post at which they had placed him: so, between the one and the other, he was held at the long saw above a month, doing his duty as well as he might; and that was but clumsily, for he neither dressed nor danced, when his rivals were adroit at both; and the lady used to shuffle her favours amongst them affectedly, and on purpose to mortify his lordship; and, at the same time, be as civil to him, with like purpose to mortify them: and his lordship was not so mystified by his amour, as not to discern these arts; and nothing but the respects I hinted, could

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have held him in harness so long. For it was very grievous to him, that had his thoughts upon his clients' concerns, which came in thick upon him, to be held in a course of bo-peep play with a crafty widow. And I have heard him often say, that he never was in all his life more rejoiced, than when he was told that madam was married; whereby he was escaped from a miserable confinement. And the fastidium, upon this occasion contracted, and his increase of business, which gave him little time to think of any thing else, diverted his mind from undertaking any more such projects; and so he went on his way.

An advantageous offer, upon disgust, rejected.

Another proposition came to his lordship, by a city broker, from Sir John Lawrence,* who had many daughters, and those reputed beauties; and the fortune was to be 6000*l.* His lordship went and dined with the alderman, and liked the lady, who (as the way is) was dressed out for a muster. And coming to treat, the portion shrank to 5000*l.* and, upon that, his lordship parted, and was not gone far before Mr. Broker (following) came to him and said, Sir John would give 500*l.* more, at the birth of the first child; but that would not do, for his lordship hated such screwing. Not long after this dispatch, his lordship was made the king's solicitor general, and then the broker came

* Lord Mayor in the year 1665.

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again, with news that Sir John would give 10,000*l.* "No;" his lordship said, "after such usage, he would not proceed, if he might have 20,000*l.*" So ended that affair; and his lordship's mind was once more settled in tranquillity.

Chance produced a glorious proposition (which succeeded) with Lady Frances Pope.

It is said that marriages are made in Heaven; and if frequent and unforeseen accidents (often to be observed productive of them) are any argument, the proverb hath countenance; for so it happened in his lordship's case: for, out of a contingent interview, a proposition sprang, pregnant with all advantages of honour, person, and fortune; more than which was not to be desired or expected. And it was for a match with the Lady Frances Pope, the middle daughter of three coheirs of Thomas Earl of Down, who lived at Wroxton in Oxfordshire. The eldest was married to Mr. Soams, of Thirlow in Suffolk, within four miles of Catlidge, the seat of his lordship's father. And, as the use is, the grave Countess of Down, with her two younger daughters, attended the new-married couple to their habitation, and made some stay there; during which time the visits of joy came in, and, amongst the rest, the family from Catlidge made their appearance; and the countess, and her daughters, in due time, made their return, which happened to be at a time when his lordship was at Catlidge. His mother laid her eyes upon the eldest unmar-

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ried daughter, and, when they were gone, turned about and said, "Upon my life, this lady would make a good wife for my son Frank. And, in short, at the next visit, with his lordship's fair consent, she moved it to the countess, who consented that his lordship might make his advances. His next business was to muster what sums of money he could, in order to make an honourable proposition; and, with 600*l.* borrowed of a friend, he could compass but 6000*l.* in all to join to her fortune, which was esteemed at 14,000*l.* for making the jointure and settlement intended to be 1000*l.* per annum. After this, he ventured down with a decent equipage and attendance, and, in less than a fortnight, fixed his point with the lady, and appointed another time to come and finish what was so auspiciously begun. And then his lordship went with full attendance, and some friends; and, after the necessary writings were sealed, the lovers were happily married in Wroxton church. But I well remember the good countess had some qualms, and complained that she knew not how she could justify what she had done (meaning the marrying her daughter with no better settlements); "Madam," said his lordship, "if you meet with any question about that, say that your daughter has 1000*l.* per annum jointure." It is certain that (besides some private reasons the countess might have) the friends of the family

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looked upon this as a very desirable match, not on account of an estate in present, but of much greater, little less than certain, to come; for his lordship was solicitor-general; and I may say a favourite of the law, and his character unexceptionable, besides his family, which was styled honourable.

Much rejoicing at the wedding, separate maintenance not insisted on.

It is not easy, nor very material, to describe the feasting and jollities, that were in the country round about, upon this occasion. It was a cavalier country, and the Popes eminent sufferers for their loyalty in the late wars: and his lordship having the like character, and known to be an obliging, as well as a flourishing loyalist, there was scarce a family which did not show all respect imaginable to the new-married folks, by visits, invitations, and festival rejoicings. So that it was about three weeks before his lordship could clear himself of these well-intended importunities. At length we decamped for London; and his lordship took, first, lodgings, and then a house, and lived, consistent with his business, in a way most agreeable to him. It was wondered that this lady, being such a fortune, had no separate maintenance assigned her. I believe the true reason was, that, considering his lordship's known good-nature and honour, they thought there would be no need of it, and it would, as a distrust, have disobliged him to have mentioned it; and I am

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partly certain he would not have agreed to and, in the same family, the younger sister was matched with a large separate maintenance. And to show how little such provisions (except in extreme cases, the supposition of which, almost in possibility, is sufficient to divert a match) signify, a lady, though suffering in her person for want of reasonable supplies, never profited the least by it; but, upon expostulation, the answer was, "Get you to your trustees." But, for certain, the Lady Frances Pope was matched into the land of plenty; and, in saying that, I have said all.

Great loss by a composition.

These ladies' fortunes consisted in estates of inheritance, come to them by descent, as coheirs under certain settlements in the family, to be made good by a due execution of several fines and recoveries formerly had. The Lady Eliz. Lee set up a pretence against them, as heir general, let in by failure of issue male; and suits being commenced, and ready for trial, his lordship, being then counsel for the Lady Lee (thoughtless of his future concerns) was at a consult preparatory to a trial the next day, which was to determine, once for all, whether these ladies should be great fortunes, or worth nothing at all; and perhaps, be found in debt for their charges and living in the interim. And the whole board (as I may call it) agreed in opinion that their client, the Lady Lee, had no title at all. But the trustees for the ladies

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were towards the law; and, being wonderfully scrupulous, had a different notion, and, considering the consequence, that might be fatal to the ladies, advised a composition; and in the morning before the trial, attended her ladyship to know her pleasure; and she furiously protested she would have half. This was a severe sentence, but yielded to; and, afterwards, the estates, subject to this question, were sold, and the money divided, of which his lordship came into his wife's part: and he used merrily to say, "He had been a counsel against himself." And if this question had not come to such a composition, which diminished the ladies' fortunes, he had never compassed his match.

His lordship's œconomy; and, by his servant's account, obviated a fraud.

His lordship, by the means of his brother-in-law, Mr. Robert Hyde, settled himself in the great brick house near Serjeants inn in Chancery lane, which was formerly the Lord Chief Justice Hyde's; and that he held till he had the great seal, and some time after. And when he came to settle in this house, he considered his œconomy, and what method to put it in: he appointed his trusty clerk in chief to pay all bills weekly, and keep all his expensive accounts. This gentleman not only kept his books fair, but had vouchers to every item. And it was well for his lordship that he did so; for one Bransby, an upholsterer, brought in a bill of 200*l.* for furniture supplied two years

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before; excusing himself, that he knew his lordship's pay was good, and, not needing the money, he was content to let it lie in his hands. His lordship believed he was paid; but that was no answer, so referred him to his clerk, who, looking back, found his bill, and the acquittance in full. Then, "Good lack! his man had forgot to cancel his book." He supposed that his lordship had not such regular accounts; and then tradesmen take the advantage, and are paid double.

Well settled; Serjeants Inn Hall built, and a common shore made.

When his lordship lived in this house, before his lady began to want her health, he was in the height of all the felicity his nature was capable of. He had a seat in St. Dunstan's church appropriated to him, and constantly kept the church in the mornings. He had the esteem of the royal family, and of all the loyal and conformable people in the nation. His house was to his mind; and having, with leave, a door into Serjeants-inn garden, he passed daily with ease to his chambers, dedicated to business and study. His friends he enjoyed at home; but formal visitants and politic ones often found him out at his chambers. Those were proper and convenient for all his purposes; but the ascent to them was bad: and, being scandalized at the poorness of the hall, which was very small, and withal ruinous, he never left till he brought his brethren to agree to the new building of it; which he saw done with

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as much elegance and capacity, as the place would admit of, and thereby gained a decent avenue, with stone steps, to his chamber, as may be seen at this day. His lordship procured to be done another good work, which exceedingly improved the dwellings in all Chancery-lane, from Jackanapes-alley down to Fleet-street. He found in his house a small well in the cellar, into which all the draining of the house was received; and, when it was full, a pump went to work to clear it into the open kennel of the street. But during this pumping the stench was intolerable, and offended, not only his lordship, but all the houses in the street, and also passengers that passed to and fro in it. And other houses there, which had any cellars, were obnoxious to the same inconveniences. His lordship proposed to them to join in the charge of making a drain, or sewer, all along the street, deep enough to discharge into the grand common sewer in Fleet-street. The inhabitants would not join, alleging danger to their houses, and other frivolous matters, and thereupon his lordship applied to the commissioners of sewers, and obtained a decree, by virtue of which it was done whether they would or no, and the charge paid by a contribution levied upon them; and then they thanked his lordship, as for a singular good done them. Which is an instance showing that the common people will be averse to

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their own interest, till it is forced upon them; and then be thankful for it.

His lady's sickness.

But, amidst all these comforts, his lordship's happiness was not a little curtailed by the bitterness poured into his cup from his lady's sickness, which began about the year 1674, and, at last, brought her to her grave; for he had so much good-nature as to resent all her pains as if they were personally his own. Of all the three daughters of the Countess of Down, she had the least good health; but, about the time of her match, she was very flourishing and well.

Removed to Hammersmith, thence to Wroxton, and there died.

When this lady began to appear infirm, his lordship, for the advantage of better air, which was thought beneficial for her, took a country house in Hammersmith, where, in the mild times of the year, she resided. And he came to her every evening, and repaired to London in the morning, as his business required. And, in his circuit time, he left her there with all fitting company and attendance. But her distemper, which was a violent cough attended with a spitting of blood, that followed upon the abatement of an acute fever she had had but just before, proceeded from bad to worse; and at length his lordship went with her to Wroxton, and, saving the necessary attendances at London, was continually with her. There wanted not doctors and apothecaries in those parts. She had Dr. Triss, a neigh-

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bour, and Dr. Danvers, from Northampton, almost continually with her. But the distemper exasperated, till, it was manifest, she could not last many weeks, and soon after, a large blood-vessel being broke by a violent fit of coughing, it carried her off. It was his lordship's good stars that forced him to London about a fortnight before she died; for every one knows what offences, nay hazards, a nearness to persons, that expire gradually in such consumptions, induceth; for he would not be absent from her more than was consistent: and when she must expire, and probably in his arms, he might have received great damage in his health.

Her funeral and monument.

After this good lady was dead, care was taken (in his lordship's absence) for her interment, which was performed in the chancel of Wroxton church, near the rest of her family, with attendance and in manner honourable, and according to her quality. His lordship ordered a black marble stone to be laid upon the place, and, afterwards, a monument of white marble to be put in the wall, being an oblong semi-urn upon a large face of a cube, with this inscription composed by Dr. Henry Paman, sometime orator of the university of Cambridge, who was, not only writer, but (knowing her well) a witness of what he penned, viz.

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Diem hic denuo oriturum & decretorium
Præstolatur lectissima Fœmina Domina FRANCISCA
Illustrissimi Domini FRANCISCI NORTH Equit. Aurat.
Capitalis Communium Placitorum Just. Uxor.
Magna & inclyta utroque Parente,
Patre THOMA Comite apud Hybernos Dunensi,
Matre Filia HENRICI POOL in Agro Gloc. Baronetti,
Fratre itidem THOMA Comite pariter Dunensi,
Eoque defuncto cum duabus sororibus Cohæres.
Virtute tamen longe ditior quàm Dote,
Utpote cui Pietas sine fuco, Gravitas sine fastu,
Sine Levitate Comitas, & grata ubique Amœnitas,
Modestia autem & Pudicitia etiam in Uxore virginalis.
Lentâ hic Ægritudine detenta quasi tremula pensitabat
An potius præmissis Liberis POPIO & FRANCISCA
Se denuo statim adjungeret, an tenellos superstites
FRANCISCUM, ANNAM & CAROLUM molli adhuc sinu foveret.
Maritus mœstus hanc Mortem tam acerbe tulit
Ac si ipse ambiret. [excurrit
Hoc igitur in Memoriam Conjugii, per sex Annos & quod
Felicissime transacti, summo Dolore & Pietate posuit.
Obiit 15 Novris Anno { Salutis MDCLXXVIII. / Ætatis suæ XXXI.

Use of monumental inscriptions.

It may be thought that this monumental inscription hath too much of the panegyric. And I confess the practice is modern; for the ancients affected the greatest brevity, and titles only expressed in letters and syllables: and I have heard the great Sir Christopher Wren say, that he did not like epigrams upon stone. And here, perhaps, the commendatory part had been better left out, because it is in the power of every cobler to

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use the like. But, as to the account of families, which makes the greatest part of this, for the sake of pedigree, they cannot be too much extended. In former times, offices post mortem, and the heralds' office, preserved the notice of births, matches, and descents, which (saving the dark parish registers) are not ordinarily discoverable to after-times, otherwise than by sepulchral inscriptions. As here his lordship's match, with a daughter of Thomas Earl of Down, is remembered, with their five children, Francis, Pope, Anne, Charles, and Frances, whereof Pope and Frances died young, and the three others survived their mother.

Disposition of his lordship's three surviving children.

After this funeral was over, his lordship's great concern was how to dispose of his three surviving children; and he found means to do it amply to his satisfaction. For his mother, an excellent lady, a compendium of charity and wisdom, took home to her his two sons, Francis, afterwards Lord Guilford, and Charles; and she placed them at school in the neighbourhood, and was wanting in nothing of maternal care and nurture of them while she lived. And the daughter Anne was accepted by his lordship's sister the Lady Wiseman, afterwards Countess of Yarmouth, who resided then at Chelsea: where also was a good school for young ladies of quality, which was an advantage. His lordship did not live to see them grow up to a full age, but so fairly advanced, as if

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he had no reason to doubt their doing well; and so it proved. After the good Lady North's death, he removed his eldest son to Winchester school for his better education, but left his younger in Suffolk, where some neighbouring relations had an eye over him; for he was very valetudinary. His lordship, by his will, committed the guardianship of these minor children to his three surviving brothers, and settled the remainder of his estate, after the deaths of his two sons without issue, upon them, *which was a singular and great trust, and it was no less justly and honourably performed.*

His lordship served but once in parliament, which was for Lynn, by the Lord Shaftesbury's undue writ.

His lordship served as a member of the House of Commons, but in one parliament, which was that called the Long Parliament, for when he was solicitor-general, it was thought fit, that with the first interest that could be made for him, he should be chosen. And it fell out opportunely enough that by the death of Sir Robert Stuart, as I remember some time recorder of Lynn Regis in Norfolk, and then burgess for the town, that place fell void; and none could make a fairer pretence to stand for that election than Mr. Solicitor-General; for what with his being commissioner for dividing the fens, and judge of the Isle of Ely, and what with his constant circuits and eminent practice in town and country, he was not only esteemed but popular in all those parts: and there was yet more to complete his interest there;

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for this vacancy happened during the Dutch war, and the town had need of a court interest to procure convoys and guardships for them, which Mr. Solicitor effectually did. The Lord Shaftesbury was Lord High Chancellor, and carried it high, in appearance, for the prerogative. The character and history of which noble person, and an account of his sending out undue writs in vacation of parliament, are so fully displayed in the Examen, that it is needless to mention it here.*

* It has been remarked, that a complete Life of the Earl of Shaftesbury is still a desideratum in our historical literature. Locke had formed an intention of becoming the biographer of his noble friend, and it is much to be regretted that he only carried his project into partial execution. Ample materials for such a work existed some years ago in the hands of Lord Shaftesbury's family; and, as we are told in *Dr. Kippis's Biographia*, vol. iv. p. 264, "a gentleman distinguished for his accurate acquaintance with the History of England" was intrusted with these documents, for the purpose of preparing a life of the celebrated nobleman to whom they related. See also *Dalrymple's Appendix*, p. 325. Subsequently, we believe, the papers came into the possession of Dr. Kippis, and on the dispersion of his library were unfortunately lost.

Roger North, like every other writer of the court party, has painted the character of Lord Shaftesbury in the darkest colours, and it is quite necessary to receive all that he says on this subject, with jealousy and distrust. It is, perhaps, no unfavourable testimony to Shaftesbury's merits, that he was regarded with rooted dislike both by Charles II. and his successor, as we learn more particularly from the lately published *Memoirs* of the latter, (see vol. i. p. 563, 651, 689.) Dryden's

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His lordship did not approve of this practising novelties with the parliament, and was afraid of what happened, but conform he must. When it was made known at Lynn that his lordship intended to stand for burgess, the magistrates intimated that they would serve him with their interest; and other encouragements he had: and before the writ came down, he made the town a

No opposition, so less expense.

character of Lord Shaftesbury is too well known to require repetition. Sir Walter Scott, in his edition of that Poet, has entered pretty fully into his lordship's history, (vol. ix. p. 222,) and Mr. Fox has sketched his character in a Letter to Mr. Serjeant Heywood, (*See the Introduction to Fox's History of James II.* p. 50.) "I am quite glad," observes Mr. Fox, "I have little to do with Shaftesbury, for as to making him a real patriot, or friend to our ideas of liberty, it is impossible, at least in my opinion. On the other hand, he is very far from being the devil he is described."

It appears from the *Memoirs of James II.* (vol. i. p. 651.) that Lord Shaftesbury at one period entertained the whimsical notion of offering himself as a candidate for the office of Lord Mayor. *Alderman* Shaftesbury, indeed, was a name which he had acquired by his city intrigues. "They (the Earl of Shaftesbury and the Duke of Buckingham) joined in becoming citizens. The earl had a great house in Aldersgate-street: the duke had one at Sion-hill, for the more security of their trade, and convenience of driving it amongst the Londoners; so that in raillery they were called *Alderman* Shaftesbury and *Alderman* Buckingham." (*Reflections on Mr. Le Clerc's Life of Mr. John Locke*). This was not the only *sobriquet* applied to his lordship; the King and the Duke of York used to call him *Little Sincerity*, while, with others at court, he went under the title of "Lord Shiftesbury."

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visit, and regaled the body with a very handsome treat, which cost him above one hundred pounds; and they complimented him highly with assurances of all their interests, which they doubted not would be successful against any opposition, but they believed there would be none. He was made free, and had the thanks of the body for his favourable assistance in procuring them convoys, &c. So far was well: and when the writ was sent to the Sheriff of Norfolk, his lordship's engagements were such that he could not go down to the election himself, but sent a young gentleman, his brother, to ride for him (as they call it), and Mr. Matthew Johnson, since clerk of the parliament, for an œconomist, of which there was need enough. The rule they observed was to take but one house, and there to allow scope for all taps to run. Nor was there need of more, for, as had been foretold, there was no opposition, which was a disgust to the common people, for they wanted a competition to make the money fly; and they said Hobson's choice was no choice. But all passed well, and the plenipos returned, with their purchase, the return of the election, back to London.

The election voided, and his lordship again chosen. The generosity

The parliament met, and at the very first, the new members were attacked; for one stood up and recommended it to their modesty to withdraw while the state of their election was under

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debate; as they did, and were soon dismembered by vote of the house; as is more fully related in the aforesaid Examen. But thereupon the speaker's warrants went to the great seal, and new writs issued. This caused his lordship to dispatch his plenipos once more, on the like errand to his majesty's ancient borough of Lynn Regis. At first, all things seemed fair; but the night before the election there was notice given that Sir Simon Taylor, a wealthy merchant of wine in that town, stood, and had produced a butt of sherry, which butt of sherry was a potent adversary. All that night and next morning were spent in making dispositions for conduct of the interest, and such matters as belong to a contested election. But the greatest difficulty was to put off the numerous suitors for houses to draw drink, of which every one made friends to insinuate in their favour, as if the whole interest of the town depended upon it. But these gentlemen plenipos determined to take no other house, but where they were, to let the quill, as well as the tap run freely, which made an account of above three hundred pounds. After the election and poll closed, all the chiefs on both sides met to view the poll-books; and Sir Simon Taylor, being on his own knowledge of the people's names, satisfied that the election was against him, called for the indenture, and signed it with the rest. This was

of his adversary prevented a petition.

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an act of generous integrity scarce ever heard of before or since, and is what I have on all occasions mentioned for his just honour, and it would be strange if I should leave it out here. And it is material also; for, when his lordship came into the house, being a very good advocate, and generally well thought of, the party there styled of the country, thought his sitting in the house might be an accession to the court interest of too much consequence to be let pass, if it might be hindered; and accordingly they expected a petition (as almost of course) to come in against him, and an opportunity thereupon to try the experiment of heaving him out of the house: for, at that time, who would not prove a petition against a declared courtier? His lordship was generally acquainted, and passed well with the gentlemen of all sides. But, in the house, none of the country party came near him, or cared that he should speak with them. So it passed till the fourteenth day; and there was but fifteen days of liberty to petition. Then one of them ventured to welcome him into the house, but asked if his election was not like to be questioned. "No," said he, "it cannot be, for my adversary signed the return for me." Within an hour or two after, at least twenty more of the same interest came and saluted him, as very well pleased with his company;

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as much as to say, "Since thou art chose, who would not have it so?"

Being made attorney-general, it was doubted if his lordship might sit.

His lordship sat in the house till he was made attorney-general: and then the same good friends began to discourse of his incapacity of sitting as a member of that house, there being an order, as they said, against it, whereof the reason was that the attorney is of course an assistant of the House of Peers.* This was enough to engage his lordship to search that matter to the quick, as he did, that he might, if put to it, not be tempted to say any thing without book, and that he might give his friends that were members just notices of the grounds of the pretence. But the country party never ventured upon the point; for, in truth, they had not that advantage as they pretended.

* Whether the attorney-general, being an assistant of the House of Peers, was entitled to a seat in the House of Commons, was formerly a subject of much debate. In 1614, a committee having been appointed to search for precedents, the House of Commons resolved that the then attorney-general should for that parliament remain; but that no attorney-general should in future serve as a member. In 1620, 1625, and 1640, new writs were ordered in consequence of the office of attorney-general being conferred on a member of the house. (*See Hatsell's Precedents*, vol. ii. p. 18. second edition.) The attempt mentioned in the text (which is not alluded to by Mr. H.) appears to be the last which was made to exclude the attorney-general from the House of Commons.

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Attorney-general. Errors of the time stated.

So now let us pass on to find his lordship in the attorney-general's place, which fell out upon the promotion of Sir Heneage Finch to the great seal. But, before this, there had been a notable time; for the king was beset by a double-visaged ministry, half papist and half fanatic, who co-operated in mischief, the former to favour their party, and the other to ruin the king. The Lords Clifford and Arlington of the former, and Bucks and Shaftesbury of the latter party. And the game lay by soothing up the king, and pushing him on in designs of advancing his prerogative. And they took, or made, some colours by the Dutch war, and other necessities, of the crown. Hence proceeded the stop of the Exchequer, commission of martial law, enjoining actions against the bankers, indulgences against law, and huffing the parliament; as the histories of that time (if true), but particularly the Examen, will demonstrate. But these parties had different aims, the popish really to enhance the king's power, in order to have the sway of it on their side; the other, to loosen the king from the affections of his people, and so directly to destroy him. They saw the crown, in mighty credit and interest with the parliament, and that it was capable of being destroyed only by high flights of arbitrary power: for a few difficulties, such as great occasions, and little

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supplies, being once brought upon the crown, to be followed (as they supposed) by either his majesty's truckling to the parliament, or else using violence for money, would soon bring it under: and upon this scheme, they pushed hard.

Character of Lord Keeper Bridgman.

After the stop of the Exchequer, whereby the bankers fell exposed to actions at law, the point was to get the Lord Keeper Bridgman to enjoin those actions. He had been a celebrated lawyer, and sat with high esteem in the place of lord chief justice of the Common Pleas. The removing him from thence to the Chancery, did not at all contribute any increase to his fame, but rather the contrary, for he was timorous to an impotence, and that not mended by his great age. He laboured very much to please every body, and that is a temper of ill consequence in a judge. It was observed of him that if a cause admitted of divers doubts, which the lawyers call points, he would never give all on one side, but either party should have somewhat to go away with.*

* A similar character of Sir Orlando Bridgman is given in the *Memoirs of James II.* "The seal was given to Sir Orlando Bridgman as Lord Keeper, who was, until some time after he had it, looked upon as a very honest and able lawyer, but upon trial proved to be too weak for so weighty an employment." (*Life of James II.* vol. i. p. 429.)

"Lord Keeper Bridgman had lost all credit at court, so they were seeking an occasion to be rid of him, who had in-

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And in his time, the court of Chancery run out of order into delays, and endless motions in causes, so that it was like a fair field overgrown with briars. And, what was worst of all, his family was very ill qualified for that place; his lady being a most violent intriguess in business, and his sons kept no good decorum whilst they practised under him, and he had not a vigour of mind, and

deed lost all the reputation he had formerly acquired, by his being advanced to a post of which he was not capable. He refused to put the seal to the Declaration [of Indulgence], as judging it contrary to law. So he was dismissed, and the Earl of Shaftesbury was made lord chancellor." (*Burnet's Own Time*, vol. ii. p. 524.) In the Examen North has given a similar account of these transactions. "There were some shrewd difficulties to be got over; one was the Commission of Marshal Law; another, an injunction to be granted in Chancery to stop suits at law against the bankers, upon the equity of public necessity. The Lord Keeper Bridgman was pressed, but proved restive on both points. He, for the sake of his family, that gathered like a snowball while he had the seal, would not have formalised with any tolerable compliances; but these impositions were too rank for him to comport with. I remember, about this time, there was at his house a meeting of the attorney and solicitor-general, and some of the king's counsel, to consult upon these points; and they all agreed they were rocks upon which they must split, if they could not otherwise decline them, for they lay directly in the way, and would not be surmounted." (p. 38.)

Some further account of the Lord Keeper Bridgman is given in a subsequent page. For his character as a lawyer, see *East's Reports*, vol. xiv. p. 134. (*Hargrave's Preface to Hale's Jurisdiction of the Lords*, p. 139.)

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strength to coerce the cause of so much disorder in his family. He boggled at divers things required of him, and particularly stopping the lawsuits against the bankers by injunction, and the commission of martial law; although, at that time, there was colour for it by a little army encamped on Blackheath. And there was a meeting of the attorney and solicitor-general at his house; where it was agreed that these were rocks they must all split upon if they could not be avoided. The Lord Shaftesbury took advantage of this difficulty, and, as was supposed, by undertaking to do whatever the Lord Keeper Bridgman refused, got him removed, and slipt into his place. But all these fine doings came to nought. The king agreed with the ensuing parliament; and then the Lord Shaftesbury, pretending, for saving himself, to turn into the discontented party, in the consequence of affairs, showed himself to be, at bottom, an utter enemy to the king and his family; and so, in truth, he continued, with remarkable perseverance, all the days of his life. But his whole history the reader will find particularly related in the Examen.

Made attorney-general, and his lordship's note.

After he was turned out, and Sir Heneage Finch placed in his room, the king asked his new Lord Keeper whom they should have to succeed him? He answered, "Who should succeed the captain, but the lieutenant?" And thereupon

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his lordship was made the king's attorney-general. Of which passage his lordship has left the following note :—

" Finch, lord keeper, attorney, and Sir Wil-
" liam Jones, solicitor."

Here his lordship skips over the Earl of Shaftesbury, who had the seal not much more than nine months. This change did not affect his lordship, so he passed it by in his catalogue. He was well pleased with his successor ; for he knew the ability of the man, and how well, for that reason, he was entitled to the place. And he thought it a credit to the king's affairs, when men most eminent for learning and dispatch of business in the law, were taken into his majesty's service. His lordship was so far from retaining any offence at what was past, that he readily went in with the promotion of Sir William Jones. And if he had not consorted with a party diametrically opposite to the interest of the crown, his lordship had joined in amity with him, and gone hand in hand in consults, and transacting what belonged to their offices ; which (as the modern course is) are nearly co-ordinate. But such different aims, as they had, could not but make a fissure which would not be closed.* And thereof, and the conse-

* In the *Examen*, p. 515, North says, " these two lived very fairly, without trouble or offence to each other upon

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quences, some account may be given elsewhere; and is already related in the Examen.

His lordship's acquisitions by practice, while he attended only the King's Bench, had been very considerable; but after he, as king's counsel, came within the bar, he began to have calls into the court of Chancery; which he liked very well, because the quantity of business, as well as the fees, was greater; but his home was the King's Bench, where he sat and reported like as other practisers. And when his practice was greatest in Chancery, he hath come, as an officer, and sat on the bench, under the judges, by the prothonotary. His business increased, even while he was solicitor, to be so much as would have overwhelmed one less dexterous; but when he was made attorney-general, though his gains by his office were great, they were much greater by his practice; for that flowed in upon him like an orage, enough to overset one that had not an extraordinary readiness in business. His skull-caps, which he wore when he had leisure to observe his constitution, as I touched before, were now destined to lie in a drawer to receive the money that came in by fees. One had the gold, another the crowns and half-crowns, and another the smaller

Gain by practice.

account of different opinions or otherwise, for divers years together."

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money. When these vessels were full, they were committed to his friend (the Hon. Roger North), who was constantly near him, to tell out the cash, and put it into bags according to the contents; and so they went to his treasurers, Blanchard and Child, goldsmiths at Temple-bar. This same telling the money was a great trust; and he was satisfied of the integrity of his friend, wherein he was confirmed by a very little accident: for while they were walking together, that young gentleman, newly come from telling his money, accidentally feeling in his coat-pocket, startled and said, "Here's a half crown," (supposed by accident to have slipped in there) but it proved only a piece of glass. His lordship, from the manner of that behaviour, concluded his friend to be (as he was) most strictly just to him.

Privacies and desires declining the court.

After the death of Sir Jeoffry Palmer, his lordship had the advantage to come into his chambers, which were very commodious, having a gallery and at the end a closet, with a little garden. This served him to walk in, and turn about with a friend, continually interchanging discourse, than which no entertainment better pleased him: for that helped him to form his notions, and to test them upon those of his friend. But his greatest content was, that they afforded an accommodation for his brother from Cambridge, when he thought fit to come to London, so near that he

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could, at any time, go from his business to him, and return to it again when he pleased; which was a practice he very much delighted in, and used. Such intercourse, though with persons raw and little experienced in affairs, he liked better than to be wholly alone; for he considered that, if he did not learn, he taught; which, to him, was near as well: for as he, being young, had received great benefit by the advices and instructions of his betters, so he desired to profit others, coming up under him, with the best counsel and information he could give them. He never lay there, but always went home to his family, and was seldom an evening without company agreeable to him. Nothing was difficult but his attendance upon, and dealing with, the court. His modesty, and diffidence, and infinite cares not to slip, or commit any absurdities in that captious nation, made him uneasy, sleeping and waking. Those, who are so far from knowing what is fit to be done, as to profess hatred of all business, which was pretty nearly the state of the court at that time, will yet prescribe to such as have reason to know better, and will not allow them the liberty of being explained, without being also accounted morose, and unfit for the court. So that his lordship lived in a perpetual stretch, as to his behaviour there, and, with all that, did not come off wonderful well; or, at least, he thought he was

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often not well used: for he was continually tormented with rascally projects, and the unreasonable importunities of great men (usually) at the heels of them. Besides a sort of falseness and treachery, he observed in most of the court, made him decline having any attachments to any of their interests; but made it his rule to serve the king, and the legal government of England, with all the fidelity and skill he had, and to do nothing that was not justifiable by law, nor make himself obnoxious to any persons who might, for his principles (which were always loyal) malign him. And, however the profits were great, and he was satisfied of the good opinion the king had of his judgment and fidelity; besides that the Lord Keeper Finch, and the chiefs of the law, were mostly his friends, and did not know of any slips he had committed; yet, always fearing the worst, he was weary of his post, and wished for another in a calmer region, though less profitable. And, among all the preferments of the law, his thoughts fixed upon the place of lord chief justice of the Common Pleas;* for he knew his own skill in the

* But, according to the *Examen* (p. 515), "that place is the most desirable of any for a good lawyer to retire into; for the profits are great, and the court not harassed with causes criminal, touching the Crown and Government, as the King's Bench is, of which the chief justice always desires to be preferred downwards to the other." It appears that the profits incident to the office of chief justice of the Common

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law so well as to be assured he was not unfit for it; and chose it the rather, because the business was wholly matter of pure law, and had little to do in criminal causes, or court intrigues; and he could answer for the rigid integrity of his determinations. And, in the intervals of business in that station, which were constant and copious, he should have more time and latitude to expatiate in entertainments that were agreeable to him, and settle himself in a way of living at ease with his family, and enjoy his friends with more satisfaction. Upon which account, although he could not expect to receive so much there, as in the attorney's place, by 2000*l.* per annum, yet he would have been glad so to have purchased his ease.

Mr. Secretary Coventry a good manager. Then Undertakers. His lordship preferred to the Common Pleas, and Mr. Coke chose at a vast expense.

As to the affairs transacted in parliament, his lordship had no great difficulty; for little or nothing of the king's business, in the House of Commons, leaned upon him, because Mr. Secretary Coventry was there, who managed for the court; and no man was ever better qualified for that post: for he was an ancient member, and had the nice step of the house, and withal was wonderfully witty and a man of great veracity. He had never said any thing in the house, which afterwards proved a lie; and had that credit there,

Pleas were less, at this time, by 2000*l.* per annum, than those made by the Attorney-General. (*Ibid.*)

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that whatever he affirmed, the house believed.* After he was gone, the court lost ground; for there came forward a sort of people called Undertakers; † for the court was negligent, and did not think of the parliament, till within a month of their meeting, and then were in a hurry how to order matters. Whereupon, some one or more of the court party in the house, who had a good opinion of their own skill, usually stepped in, and undertook for the management of the king's business that sessions; and his majesty need not be farther concerned at present. And this kind of service in the overture, was always acceptable; especially in a place where all kinds of business was uneasy, that is, in his majesty's court. But the house al-

* Sir William Coventry was the youngest son of Lord Keeper Coventry. In 1662, he was appointed a Commissioner of the Admiralty; in 1665, a Privy Counsellor; and in 1667, a Commissioner of the Treasury:—he died in 1686. He was one of the very few honest ministers employed by Charles II. Burnet calls him "a man of the finest and best temper that belonged to the court." (*Own Time*, vol. i. p. 449.) He is accused of malice by Clarendon, in his life by himself. See more of him in the *Memoirs of Pepys, passim.*

† This was not a new term. When Clarendon selected some persons "of great experience and known ability to confer with, for the better preparing and conducting of what was to be done in the House of Commons," they "feared to undergo the odious name of *Undertakers*, which in all parliaments hath been a brand." (*Life of Clarendon*, vol. ii. p. 354.) The name appears to have had its origin in the reign of James I.

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ways found out who were their guardians and sponsors to answer for them: and such never failed, through their indiscretions, presumptions, importunities, subterfuges, or tricks, to give advantage against themselves; and, in a few days, commonly, were routed horse and foot. And then there was no way but to quit them, and agree with the more friendly part of the house. All which must be readily owned by such as remember Sir William (or Sir Francis) Wheeler, to name no others, managers for the king in the House of Commons. When there is a set of honest gentlemen, as there was in that long parliament, nothing loseth them so much as disingenuity, and underhand dealings. For the adverse party contrive to expose them with satirical reflections, and make those honest gentlemen almost ashamed of their own party. No other was to be expected, but that his lordship should be entirely for the interest of the crown; not so much upon account of his place, for that never carried him into any indirect action, but from his judgment, of which I have given an account elsewhere. And he was so far from losing his interest with his friends, by his behaviour there, that he became more firmly allied to them, for his sense was, commonly, theirs. He could not attend the house constantly, but took the liberty of pursuing his practice in Westminster-hall. And, being there, what he did was occa-

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sional, and consisted chiefly in resolving the fallacies of the country party: whom to oppose in gaining the point of a money bill, and answering to the artillery of grievances, which were always erected and pointed at the money designs, was the chief of the court employ, in parliament, till about the time of Oates's plot, when the country party went off with all at once. But, long before that time, his lordship was removed into the Common Pleas, and Mr. Coke of Norfolk succeeded him in the burgess-ship of Lynn, but not so easy and cheap; for his managers did not keep in due bounds, but let loose the tap all over that large town, and made an account of 7000*l.* or more, resting due to the town, besides what had been paid for the expenses.* Sir Simon Taylor opposed, and thought he had the return, and being resolved to petition, was courted by the Earl of Danby, at the price of all his charges, which were not trifles, to forbear, as he did, else his lordship's son-in-law, Coke, at that conjuncture, had been turned out.

Of the arts of parliament driving.

Whatever his lordship signified to the court interest, during the time he sat in parliament, it is sure enough that he served himself, by improving his knowledge of men, and their ways in great

* This was an enormous sum. According to Sir John Reresby, the expenses of a contested election, in the reign of Charles II., were from 100*l.* or 200*l.* to 2000*l.* (*Memoirs*, p. 23.)

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assemblies. And the arts of driving are no where so eminent, as at the committee of elections. And it were well if all gentlemen, that come to such public employments, would observe these arts; but with a sort of contempt and scorn, and not think them matter of imitation; or, indeed, any arts so to be, but what tend to favour truth and justice. It was not without reason that the best orators of the ancients determined that a man could not be a good orator, unless he was an honest man. For art is a good engine to subdue ignorance, or malice; but to support the latter against justice, is not an art, but a diabolical subtilty.

The circumstances and conduct of his whole employment.

In the process of this stage of his lordship's life, his condition was like that of a plant set in a proper soil, growing up, from small beginnings, into expanded employment; so much that one would think it scarce possible for one man to find time to dispatch the affairs of it. One help he had, which was good servants, when he had most need of them. Mr. Matthew Johnson, one bred in the office of clerk of the patents, was in that province, and Mr. Robert North for his chief clerk, viz. for the confessions and other affairs of trust. And when business of titles of estates came to him, he often recommended his clients to some industrious and able counsel; as was before observed. His lordship's great labour was to get time to be in-

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structed well in causes of great consequence, as trials at the bar, and hearings in Chancery; and, for that work, he took the fresh of the morning. He had a very trusty boy, who never failed, winter and summer, to come into his chamber at four in the morning. He could, over night, just, and but just, admit his clients and their agents; and, being informed by them in the history of the cause, and where the pinch was, he was then prepared, next day, to peruse his breviate, and the papers left with him; which was impossible to be done for one, whilst others waited without. The office of attorney hath little or no vacation; such continual attendance on the court did that office require. But he was more capable of conforming to it, because, being then married, his habitation was in or near the town, and he had no country concerns to call him from thence. But, till his lady came with him to London, he kept no house in town, but ordinarily dieted in the Temple; that is, at noons, in the hall, and, at nights, in his chamber; where the ordinary commons, with a bottle or two, was a regale to him, and two or three constant friends with him. But that was, like the Harpies' supper, by snatches, for he could seldom get many minutes to enjoy himself and his friends; such was the importunity of his business. But yet he took great pleasure in those little liberties; and he was not pleased, when he

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had not, at least, a third man (for I was always one) to help out his single bottle, and, for fail, used to send for a choice friend or two. He used to say that a glass of wine, to sedentary persons, was equivalent to exercise. He could never sit up late; for he must be up early. And, after dinner, a short turn in the other world, was not only an exceeding refreshment, but almost necessary to him; for his constitution required more sleep than many others needed.

His virtuous course of life, when single, attested.

Such was his lordship's course of life, during his celibacy; absolutely void of all manner of vice, excess, and incontinence: of which I am yet a living witness, that scarce was ever from him, but in the very employ of business. I do not remember that he so much as took the air in his coach without me; and so, when he dined or supped abroad, unless with grandees of one sort or other, I was with him. He never was in danger of being overtaken with wine to excess from his own seeking; but only when confined to company, especially of superiors, and that was very seldom, and so far as clipping only; for he had strength of head to bear a great deal. He was always sensible of this infirmity coming upon him, and could curb his speech, but not his merriment, as I have observed already.

Married, no less, and more orderly.

After he was married, and his lady come to town, he became a house-keeper; but used

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lodgings for a considerable time, till he could accommodate himself with a house; which, at length, he did to his content, in Chancery-lane, as has been related. His course of life was now much altered from what it was; but all for the better, as well in all kinds of accommodation, as the regularities of life, which he greatly affected. In this state he kept a plentiful, but very plain table, and had great resort of his friends to him; at dinner sufficient, but much more at supper: for then he was more loose from business, and company was most acceptable to him.* And he consequently held to his custom of eating suppers, and counted it the best refreshment he had in the four and twenty hours. And how he diverted himself with his family, when alone, will be showed elsewhere.

Friend to students, and a virtuoso.

I cannot vary his character much, in this stage, from that subjoined to the former, only now he had a superiority, and his thoughts were ever intent upon methods for rectification and improvement, wherever his views extended. And, as he had profited extremely by the encouragements, in his studies, he had received from others, so he did what he could to administer like advantages in study, to such as came in his way to instruct:

* The three brothers used to meet on Thursday nights at the house of Sir Dudley North, and on Sunday nights at the Lord Keeper's. *(See the Life of Sir D. North.)*

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instances of which good will, I shall take occasion particularly to relate elsewhere. The state was not very much roiled with faction, till he was taken from practice to the seat of justice, and had more latitude to divert himself with ingenuities; such as music, philosophy, painting, mechanics, and the like; which, in the absence of strangers, were the subject of his domestic conversation, as will appear in proper place.

Instances of an universal application to improve.

He had acquired, in this busy time of life, a general skill in the European languages, as French, Italian, and Spanish. And now he fell, last of all, upon Dutch, and was very desirous to make himself master of that. His friend Sir Peter Lely (of whom elsewhere) had inspired him with an inclination to it; telling him what sumptuous libraries they had, and magnifying the elegance and significancy of his country dialect; and, as if there needed no other books to make men exquisite scholars and politicians, he recommended to him a voluminous collection in folio, called *Saken van Staten;* such a sort of book as our Rushworth: And, in order to gather this part of the *belles lettres,* he got a Dutch Bible, and used to carry it to church. To be short, in his greatest flow of business, he let slip no opportunity of improving himself, as well in the law, as in other valuable accomplishments. He had a very good memory, but never trusted it with his independent

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remarks; which made him (as I have said elsewhere) so given to note all useful occurrences; for, of such matters, multitude confounds the remembrance. So necessary is it to have, as it were, a basket to put them in. And this he did with no less constancy and application, after he was judge, nay, lord keeper of the great seal, than when he was a student, or minor practiser. He was also a dexterous index-maker: if he procured any good law-book in manuscript, which he thought worth the reading over, he certainly made an index to it; but every notable discovery, or light, in the law, derived upon good authority, he crowded into his solemn common-place book. He would not reflect with himself, that he had once got but now had lost any thing.

Made lord chief justice.

Come we now to the third division of his lordship's life, which commenced from the time he was advanced to the post of Lord Chief Justice of the Common Pleas;* and that was soon after the death of the Lord Chief Justice Vaughan.† Of this preferment his lordship has left the following note.

* In Hilary Term 1674; see the ceremony of his appointment in *Freeman's Reports*, vol. i. p. 187.

† Sir John Vaughan died in 1674. He was the intimate friend of Selden (who dedicated to him his *Vindiciæ Maris Clausi*), and, in his early life, of Lord Clarendon, who has not, however, drawn a very amiable character of him. (*Life of Lord Clarendon*, vol. i. p. 32.)

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" Lord chief justice without soliciting."

I have mentioned that his lordship grew weary of the attorney-general's place, and why, and how much he desired a quieter post, and particularly that of the Common Pleas. Now we have it intimated, here, that his desires were accomplished; for, upon the death of Vaughan, the chief in that court, his lordship was looked upon, on all hands, to be the fittest person to succeed him. His lordship had but one scruple, which made him a little deliberate about his acceptance; and that was the difference of profit; for the attorney's place was (with his practice) near seven thousand pounds per annum; and the cushion, of the Common Pleas, not above four thousand pounds.. And so far the reason wrought upon him, that he would expect that the offer of it should be made him; and that he would not seek, although, for cogent reasons, he much desired it; but, if such offer came, he was determined to accept it: and if the court should use him so ill, as not to give him such proffer, he should not be very much mortified. But, accepting, he should account himself enfranchised from the court brigues and attendances, and other labours of his practice, at the price of the difference.

A disappointment of Sir William Mountagu.

One thing fell out unhappily in this affair; which was a necessity to cross the desires of a near relation, for whom he had no slight respect;

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and it was Sir William Mountagu, one of the Boughton family, his lordship's mother's cousin-german. Sir William pressed, with extreme earnestness, that his lordship would give way that he might obtain that place, alleging, that some of his ancestors had been in it. And he teased with a world of such weighty reasons, to induce his lordship to refuse it; and, after that, he said he doubted not of obtaining the place. All that his lordship said to him was, that he would not sue for it; but, if it was offered, he must hold him excused if he accepted it. This did not suffice; and Sir William took it desperately ill of his lordship, that he would not, for his sake, decline it. Such compliments are a little too costly to be expected, how near soever the relation is; and, in such cases, the ill manners lie in the asking, and not in refusing when asked. But this incident bred no ill humour between these two noble relations. Sir William was made lord chief baron of the Exchequer;* and his lordship, while chief justice of the Common Pleas, lived in perfect amity with him; and he had a due respect for his lordship while they lived together. It is neither unlawful nor undecent for relations to be competitors; but, to suffer ran-

* He was removed in Easter Term 1686, (*Shower's Reports*, vol. ii. p. 471,) in consequence of his refusal to support the dispensing power.

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cour and ill will to grow thereby, is a sign of an upstart and degenerous race. But persons of honourable families, as these two were, will, as they did, be careful in fortifying their friendships so as no unlucky event may corrupt them.

Acted as chief justice of the Common Pleas.

His lordship forbore sitting in court for divers days, to the end that such causes, as had been agreed by the court, might receive judgment without farther argument. And, then, his lordship sat constantly, according to the duty of his place. The court (answering the title Common Pleas) was placed next the hall-door, that suitors and their train might readily pass in and out. But the air of the great door, when the wind is in the North, is very cold, and, if it might have been done, the court had been moved a little into a warmer place. It was once proposed to let it in through the wall (to be carried upon arches) into a back room which they call the Treasury. But the Lord Chief Justice Bridgman would not agree to it, as against magna charta, which says that the Common Pleas shall be held *in certo loco*, or in a certain place, with which the distance of an inch from that place is inconsistent; and all the pleas would be *coram non judice*. Although at the same time, others thought that the *locus*, there, means the villa only, so that the returns being *apud Westmonasterium*, the court might sit on the other side of the abbey, and no solecism of

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jurisdiction happen. But yet that formal reason hindered a useful reform; which makes me think of Erasmus, who having read somewhat of English law, said that the lawyers were "*doctissimum genus indoctissimorum hominum.*"

Officers of the Common Pleas.

It seems that, in old time, the business of the court was very great, because the offices are numerous. So it appears, at this day, in the Chancery, that the clerks are multiplied. First, the six did all the work that originally might be done by a single secretary; and then their clerks, that rose to ten a-piece, mere copiers under them, have got to be officers, and thirty more added to them. And still all of them have clerks, who may, in time, hope to be officers too, and beard their masters, as they do the six clerks. The cursitors made out process *de cursu*. Special writs are *magistralia*. The masters in Chancery are twelve. The cursitors are by counties; these are the lord chancellor's. The philazers and exigenters are by counties also, and are of the Common Pleas. The prothonotaries are three, now, as it were, coordinate, but grew up with the business; for it seems, at first, there was but one, as in the King's Bench. He was the proper officer of the court, who was to enter up the replications, rejoinders, rebutters, &c. (pronounced in law French) upon the record in Latin, and not by paper books brought in by attornies, with serjeants' hands, as

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now the use is. But yet the fees are taken as if the prothonotary did all, as his office required, by himself. If a serjeant said "judgment," that was a demurrer; if "prist," that was an issue to the country; and the form belonged to the prothonotary. But then the crown would needs have a peculiar prothonotary, who should take care of the king's profits, and rights, that arise in, or come before, the court; and then, who should deny him acting, in all causes, as the others did? These were so busy they had no time for paupers; so another prothonotary crept in upon charity, that the paupers, who could not pay fees, might be dispatched. And now, of all these, it is hard to know which is which. They have their secondary clerks, and ride in coaches all alike; and, being a co-ordinate three, are no small nuisance to the searching business. The chief justice hath the disposing of the officers of the court; but, at the admission, the other judges, not caring to see the pudding creep, and have no share, expect to be attended; the consequence whereof is a small present. I have observed that, upon change of some officers, there were bickerings against this power of the chief justice, in a manner aristocratical; as if placing of officers was the act of the court, in which they sat as judges in parity of voice with his lordship, and were also alike trusted in the approbation of fitness, or to that purpose.

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Keeper of the records and treasury.

He is the keeper of the records, and makes the returns of writs of error, and puts in a clerk of the treasury where the records are kept; which is of considerable value. When his lordship came into his place, he found the clerkship of the treasury in grant to the Lord Berkeley. The crown had granted that place divers times, but it was always resisted by the chief justices, who insisted upon the nomination to the place, not more by a prescription, than from the nature of it, being the office and charge of the chief justice, and the clerk his deputy for whom he is to answer; and that the patent was void in law, as it was also for the nomination to other offices that the chief justice claimed by prescription. Upon this contest with the Lord Berkeley, in consideration he was a deserving person, and it would not be well taken to be severe with him, his lordship let go about half the profits, and, naming his own clerk, allowed the Lord Berkeley five hundred pounds per annum, while he lived. But, after his death, his lordship gave way to no patentee, if there was any; and if a patentee had claimed, he would not have allowed it. How that matter hath gone since, I know not. His lordship always searched to the bottom of authority, and reason, in every thing he undertook, which was relevant, and above the common notion of things; as will appear by the next in-

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stance of an important alteration he made and succeeded in.

Notwithstanding this long catalogue of officers, his lordship found the court ill supplied with business to keep them all employed; for, as matters had been ordered in Westminster-hall, the court of King's Bench went away with much the greatest share of the suits promoted by London writs; and the proper court sat idle, and had scarce enough to countenance their coming to Westminster-hall every day in the term: and it was thought that if the country attornies, who were most of the Common Pleas, had not, by taking apprentices, continued a succession of such as brought their business to that court, it had been utterly deserted. This may seem wonderful, but really so it was: for, the two courts being upon terms of competition, the King's Bench outwitted the Common Pleas: and it was by gaining an easy way of holding to special bail upon latitats; for plaintiffs are commonly very outrageous, and love to turn the first process (by a barbarous abuse of special bail) into an execution, which ought to come after execution, and be the last. And the Common Pleas was rightly served; for they thought to exclude the King's Bench by getting an act of parliament that none should be held to bail unless the cause of action was expressed in

Contention for jurisdiction.

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the writ. That was done of course in the original writs returnable in the Common Pleas; but not in the King's Bench, whose the process of latitats was, viz. *in transgressione super casum.* There the Common Pleas thought they had nicked them. But the King's Bench was not so sterile of invention as to want the means of being even with that device; and therefore they added in their writs *ac etiam billæ* to the *transgressione super casum* (for instance) *centum librarum;* and then, said they, the cause of action is mentioned in our writs. This was advantage enough over the Common Pleas; for their originals were fineable: and not so expedite to be put in due form as the common *transgressione super casum;* for, upon that, the party, being (as the style of the court is) *in custodiâ mareschalli,* may declare for any cause of action whatever. The late chief justice Sir Orlando Bridgman, and his officers of the Common Pleas, gave this way of proceeding by the King's Bench very ill language, calling it an arbitrary alteration of the form of the legal process, and utterly against law. But the losers might speak; they got nothing else; and the *triccum in lege* carried it for the King's Bench; which court, as I said, ran away with all the business.

Ac etiams set up in the Common Pleas.

In this melancholy state his lordship found his court of Common Pleas, when first he sat there; and his mind was much taken up with specula-

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tions concerning it, and deliberating whether or no a way might be found out to set themselves upon a level (at least) with the King's Bench as to common pleas. He thought it hard that the court, instituted for such, should be deprived by a court that was instituted for pleas of the crown; and that it was a shame to be outwitted. He did not see but they had as much power over the process of the law as the King's Bench had; and, at last, determined to put in execution the same device that they had used, which, being good law at one end of the hall, would not be against law at the other. And it was by doing the same thing in their writs called *clausum fregits*, upon which a *capias* lies; and, after appearance, the plaintiff may declare for debt, or assumpsit, &c. and filing a proper original at any time, before a writ of error brought, warrants the judgment. This was by adding the same words *ac etiam billæ*, &c. and then they, upon the *clausum fregits*, (without fine or delay) might hold to bail, as the other court did upon the latitats. But this was not done without very much consideration, and weighing all consequences, and all objections, and compromising all interests, that the regulation might pass smooth, and without opposition from any but the King's Bench, for whom they had an answer ready. For whereas the Lord Chief Justice Hales exaggerated the same objections against

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the Common Pleas, as Bridgman had before urged against the King's Bench; it was asked how he could criminate the Common Pleas for that which his court had done, and continued to do every day.*

Difficulties therein surmounted, and business increased.

The great difficulties, to be got over, were, first, to reconcile the king's interest, and, next, the lord chancellor's. The king had fines upon the originals, and the lord chancellor disposed of the cursitor's places, that made them out. But his lordship surmounted them by showing that care should be taken (and orders, for that end, were effectually established) that originals should be filed where they were necessary, and they were not otherwise filed before; and the *ac etiams* should not take place, but in such cases only where a latitat would serve. So the officers, or the crown, did not lose any thing; but, on the contrary, were like to be great gainers by bringing in flow of business into the court, which would have that effect. For what was got by forcing all suitors to proceed by latitat, which could produce no original, and so decline this way that sometimes would produce them? And to show the necessity of it, it was made appear that, for the ease of arrests and bail, even the attornies of the Common Pleas used the King's Bench writs, by

* See "Sir M. Hales' Considerations touching the amendment of the Laws." (*Hargrave's Law Tracts*, p. 289.)

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dealing in the names of the proper attornies of that court. I remember that, when this matter began to be formed in his lordship's mind, he thought of using the words *nec non* instead of *ac etiam;* and then the writs, for distinction-sake, should be called *nec nons:* but, at length, he thought fit not to vary a syllable; for, however the thing was the same, the different sound would serve to quarrel at; and, in captious matters, it is best to give no handles. I have walked over this alteration of the Common Pleas process (which was wholly owing to his lordship's invention and formation, as it is now practised,) in an historical rather than a legal style. But it is not for want of a good guide; for I have a complete account of it, together with, not only the historical part, but all the consults, deliberations, and comparisons of his lordship's, belonging to it, from his own pen. And though it is of that kind which few, but professed lawyers, may comprehend, because it falls upon forms and terms of law; each of which needs a glossary to explain it: yet the matter and consequence in his lordship's conduct, by whose skill it was established, was too bulky to be here let pass in silence. After this process came into common use, it is scarce to be conceived how the court revived, and flourished; being, instead of vacation in term, rather term in vacation. So large was the increase of trials, by *nisi prius* out of the

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court, as also of motions and pleas in the court. Not a little of which increase was also owing to the fame and common opinion of his lordship's justice and steadiness in his administrations; whereby counsel would advise, and attornies assuredly depend upon success, if their causes were sound and good.

Costs not allowed attornies in *propriums*.

His lordship made another regulation, which, being but a direction of the court, without any solemn act or order registered, I will mention here. The allowing *propriums* to the attornies, in taxing of costs, was a very great abuse: for, if they have their business pass the offices for nothing, it is favour enough for them; but if they prevail and recover, so that costs are to be taxed, and, in doing that, the officer allows them the cost of the offices, which they never paid, they gain by frivolous suits: for, if they recover but one pound damages, or snap a judgement against a poor man by a turn of art, they shall not only have costs taxed for what they laid out, but for what they did not lay out; which is clear gains to them, out of the purse of a poor man, whether they had reason or not. This was manifestly the cause that attornies multiplied *propriums;* out of which, by mere costs, they made a certain profit. His lordship considered this as an abuse of the privilege of attornies, and would not permit that they should have any costs allowed, which they

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did not expend: and so the court thought fit to declare to the prothonotaries. But this made almost a mutiny of the officers and attornies: the latter are always favourites of the former, because they bring grist; and they clamoured, saying that this made the privilege of the attorney become the privilege of the adversary; and that it indeed destroyed their privilege; and that, if one party must gain by the allowance of it, as formerly, it is more reasonable it should be the attorney, than the other party. To this it was answered, that if the attornies were weary of their privilege, they might quit it, and be upon the square with other men. But if the court finds their privilege turns to a common nuisance, it is high time to take it away. So it stood in his lordship's time: I know not how it hath gone since, whether they have prevailed to get this good order antiquated or not; nor doth it much concern my present design.

Story of the Dumb day.

There was an incident, that happened not long after his lordship came into the place of chief in that court, which, though in itself, and in the end of it, ridiculous, yet, being an affront to the court, and in particular to the lord chief justice, and by the whole bar of serjeants, all in a lump together, ought to be related, as I shall do, really as it was acted by them. It hath been the usage of the King's Bench, at the side bar below in the hall; and of the Common Pleas, in the chamber within

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the Treasury, to hear attornies, and young counsel, that came to move them about matters of form and practice. His lordship had a younger brother (Hon. Roger North) who was of the profession of the law. He was newly called to the bar, and had little to do in the King's Bench; but the attornies of the Common Pleas often retained him to move for them, in the Treasury, such matters as were proper there, and what they might have moved themselves. But however agreeable this kind of practice was to a novitiate, it was not worthy the observation it had; for once, or twice a week, was the utmost calculate of these motions. But the serjeants thought that method was, or might become, prejudicial to them, who had a monopoly of the bar, and would have no water go by their mill, and supposed it was high time to put a stop to such beginnings, for fear it might grow worse. But the doubt was, how they should signify their resentment, so as to be effectually remedial. At length they agreed, for one day, to make no motions at all; and opportunity would fall for showing the reason how the court came to have no business. When the court (on this dumb day, as it was called) was sat, the chief justice gave the usual signal to the eldest serjeant to move. He bowed, and had nothing to move: so the next, and the next, from end to end of the bar. The chief, seeing this, said, "Brothers, I

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think we must rise; here is no business." Then an attorney steps forward, and called to a serjeant to make his motion; and, after that, turned to the court and said, that he had given the serjeant his fee, and instructions over night, to move for him, and desired he might do it. But profound silence still. The chief looked about, and asked, "What was the matter?" An attorney, that stood by, very modestly said, "that he feared the serjeants took it ill that motions were made in the Treasury." Then the chief scented the whole matter, and, "Brothers," said he, "I think a very great affront is offered to us, which we ought, for the dignity of the court, to resent. But that we may do nothing too suddenly, but take consideration at full leisure, and maturely, let us now rise, and to-morrow morning give order as becomes us. And do you attornies come all here to-morrow, and care shall be taken for your dispatch, and, rather than fail, we will hear you, or your clients, or the barristers at law, or any person that thinks fit to appear in business, that the law may have its course;" and so the court rose This was like thunder to the serjeants, and they fell to quarrelling, one with another, about being the cause of this great evil they had brought upon themselves: for none of them imagined it would have had such a turn as this was, that shaked what was the palladium of the coif, the

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sole practice there. In the afternoon, they attended the chief, and the other judges of the court, and, in great humility, owned their fault, and begged pardon, and that no farther notice might be taken of it; and they would be careful not to give the like offence for the future. The chief told them, that the affront was in public, and in the face of the court, and they must make their recognitions there next morning, and in such a manner as the greatness of their offence demanded; and then they should hear what the court would say to them. Accordingly they did; and the chief first, and then the rest, in order, gave them a formal chiding with acrimony enough; all which, with dejected countenances, they were bound to hear. When this discipline was over, the chief pointed to one to move; which he did (as they said) more like one crying than speaking: and so ended the comedy, as it was acted in Westminster-hall, called the Dumb day.

Recovery of infants.

His lordship was exceedingly troubled with the importunities of great men. As, for instance, the Lord Bruce, who had married the sister and heir of the Duke of Somerset, and the Lord Willoughby, who married Mrs. Wynn, and divers others, whose estates were settled, and their sons tenants in tail vested. These persons importuned him to give way, that privy seals, to enable these heirs to join in common recoveries for barring the entails, might

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take effect; and that recoveries, under colour of those privy seals, might be allowed to pass in court.* Several of them had petitioned his majesty, and had references to him depending. But his lordship was so averse, or rather positive to the contrary, that they desisted. He alleged that if a guardian, regularly assigned by the court to plead for the infant, would let a recovery pass, they had nothing to say to it. Their only care, in such case, was not to admit a guardian irresponsible; for the infant had an action, or an account, against such guardian, as for a breach of his trust, but no person of value was willing to venture that. And as for the opinion that a privy seal, if the court allowed of it, would take away the error, and that a suit, for amends to the infant, would not lie against the guardian, or that a guardian that was a beggar might be assigned, they would all fail them; for the privy seal altered no assurance, or right, and imported only that the king would not punish his judges for the misdemeanor: and, perhaps, not that neither; for an illegal licence, to the injury of a particular person, is void, even against an indictment. "And," said his lordship, "either such recovery of an infant is lawful or not. If lawful, it ought to be let pass

* Where a recovery by an infant is necessary, it is the modern practice to apply for a private act of parliament, instead of petitioning for a privy seal.

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by the judges, without more ado; and if it is not lawful, the king ought not to be troubled about it." His lordship was not so utterly against this practice, without reason; and that settled upon great deliberation, and consultation of former attempts and proceedings. For, his lordship had caused searches to be made for precedents of recoveries of infants by guardian, and had a long list returned him. It would be well if the judges of the law, in all times, sworn to act according to "Magna Charta," as in the place of majesty, *nulli negabimus, nulli differemus justitiam*, would be as careful of the rights of the subject, according to law, as his lordship was. What is here alleged of recoveries of infants, is a signal instance, on his part, that he preferred the duty of his office to all interest at court: and, in such cases, the courtiers are often furious and (according to the doctrines there) criminative against the judges, that are not easy, as being morose, ill-bred, and disrespectful, and scarce to be endured in their places. But comparisons of times, persons, and things, however just, are for the most part invidious; therefore I carry this no farther, but proceed to another eminent instance of his lordship's religious punctuality in the due performance of the duty of his office, wherein any person in the world was, or might be, consequentially interested, or concerned. And I have heard him say, more than

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once, that he would have it in his power to swear upon his death-bed, that, in all his employments and trusts, he never knew any thing out of order, which he did not endeavour to set right as soon and as well as he could.

Fines of infants.

The lord chief justice of the Common Pleas, by virtue of his office, takes recognitions of fines, out of court, which are afterwards recorded in court. But the other judges do it by virtue of a *dedimus potestatem;* but only their caption is returned and recorded without oath: whereas, where the *dedimus* is to ordinary persons, it is returned upon oath: unless, as they say, there be a knight in the commission; and, in that case, it comes in without oath; which, by the way, being so, is a fair pathway to frauds as to infants and feme coverts. But this advantage of the chief justice brings more fines, in and about London, to be taken by him; and he hath a clerk called his clerk of the fines. There are, sometimes, frauds in the undue captions and returns of fines, which are of great consequence to men's titles; and although a fine be never so fairly entered and recorded, yet if, upon complaint, and hearing of parties, it be found to have passed unduly, the court vacates the fine, as if none such had ever been. And, particularly, the chief justice, knowing of any such abuse, by what means soever it is, ought, *ex officio*, to call the parties, and, after due examination had, do

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right. Now, when a covetous, or needy man, hath occasion for his wife's land, to alien, or to reserve for himself, and it happens that the woman is under age, and cannot, regularly, settle, then the trick of a surreptitious fine is tried. And there is a strong temptation to it; which is that, if the woman dies before a fine levied, her estate goes away, but if her fine pass during her minority, and she lives to be of age, all is safe; for, after full age, a writ of error doth not lie, for the cause of infancy, to reverse any fine: and that for a very odd reason, viz. that infancy is to be tried only by inspection of the person, which cannot be done after full age. Therefore, unless a man gets his wife's fine during her minority, he runs the risk of her death before. But yet, even after the full age (as I take it), if the court, upon examination, find a fraud in the commissioners, and that the party was really under age at the time of the caption, they will vacate the record of the fine, as unduly obtained and entered, though a writ of error, in such case, could not be brought to do it.

Fines vacated for infancy.

It happened that his lordship came in the way of a discovery of the like practice in two cases. One of them was from a slip in the discourse of an intimate friend, who was, at vacant times, seldom absent from him. This person was told (inadvertently) by a gentleman of value, that he had obtained of his wife, an inheritrix, a fine during

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her minority; and he (more unthinkingly) spoke of it in his lordship's hearing: and, after this, no interest, or intreaty, would prevail with his lordship to pass it by; but he immediately sent his order for the gentleman, his lady, and the commissioners, to attend in court, and, upon hearing all parties, vacated the fine. If the lady had died before her full age, the estate had gone away; but she lived to levy another fine; and so no harm was done, but only the disgrace of having played a false trick to no purpose. And he did the like in another case, which he catched a knowledge of by like accident. So rigorous was he to his purpose I touched before, viz. *Nil conscire sibi.*

Nature and antiquity of fines.

And, as for fines themselves, they are no other than an accord of a lawsuit entered among the acts of the court upon record; and now, as well by the tenor of them, as by usage, and certain statutes interposing, they are become a common, and the firmest assurance of lands. The usual import of them, for assurance of freehold, is a cognizance of right founded upon some legal conveyance, pre-supposed; which implieth an antecedent feoffment; and therefore a fine is called a feoffment upon record. This course is the most ancient of any in our law, and is coeval with the county court, which was the ordinary court of justice, in the times before the Conquest. It was then a com-

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mon practice to recognize deeds, concords, and last wills there; which being entered in the acts of the court, or wrote in the margin of God's book, (the mass book, or of the bible itself,) was irrefragable; as who will may see in the learned epistolary dissertation of the Reverend Dr. Hickes in his great Thesaurus. But after the Norman conquest, when the king's courts were established, and titles of lands, which were feudal, only triable there (for freehold, at this day, ousts the county court of jurisdiction), after the older usage of recognizing in the county court (then deprived as to land) they came to recognize in the king's court of Common Pleas; but it must be with royal leave, and paying to the king a fine for the liberty of agreeing: because, if the suit had gone on, the party in the wrong was to be amerced. Then, after the licence actually obtained, and the king's silver paid, without which the concord is no fine, the fine is perfected, though in some other respects deficient. Hence, as I take it, the concord is called a fine levied, and not because it is *finis litium*. I have here but touched so much as I am apprised of the ancient history of the law, as to fines, in conformity to what his lordship used to recommend to his friends, who were studiously inclined; encouraging the speculation of originals, or the history of the common law; as will be showed in proper place.

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Brunskill's project of the green wax.

While his lordship sat as chief in the Common Pleas, he, and the other judges, were exceedingly troubled with a very impertinent projector, one Brunskill, who pretended to make great improvements to the crown, by the revenue of the green wax; which is that which comes, or ought to come, into the Exchequer, by estreats from the several courts of justice, and consists of the mulcts of jurors for default of appearance, and other mulcts, which are sent from thence down in schedules, under a seal of green wax, by way of warrant, to the sheriffs and bailiffs of liberties, to be levied. His lordship (and the judges) being tormented with references, from the court and the treasury, about a patent which this Brunskill was suing out concerning this revenue, applied his thoughts chiefly to it, that he might be able to answer those great men, who, (as in all rascally projects, which come with pretence of great gains, and are little understood,) from behind the curtain, solicited the project, and were to be sharers in it. And, having searched all corners to find what had passed formerly in that matter, and designing thoroughly to expose the vanity, or rather (with respect to the quiet of the people) the pestilence of it, he left in writing, what he was pleased to entitle, "An History of the Green Wax;" and it is sufficient to inform any one that is desirous to understand the walks this project

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hath had, and the true intrigue of it. But in regard I find a paper of his lordship's upon the same subject, which I presume was wrote more early, in order to answer some great man's importunity, I shall subjoin that here; which, for the present, may give an account satisfactory enough.

Account of it by his lordship.

"The green wax was in the survey of one Mr. "Aram, when Sir Robert Howard held the farm "of it, who appointed the best men he could get "for the service. It was represented to the king "that the judges and juries were discouraged, "and that the revenue went to private hands; "and thereupon the king bought in the farm for "six thousand pounds. Then Mr. Brunskill's "project was set on foot to improve this revenue "to twenty thousand pounds, sixty thousand "pounds, and, afterwards, to four hundred thou- "sand pounds per annum. Upon the first, Mr. "Aram's patent was determined, and the king "expressed some dislike to Mr. Aram. After- "wards Mr. Brunskill kept a fluttering to set up "an office in the Temple, and great lords to be "commissioners, which alarmed all the world. "And Mr. Brunskill would never take the ordi- "nary care that belonged to the business, but "pressed the judges to make such rules and orders "as they could not do by law; and he complain- "ed of them to the king, and entered into con- "troversy with them; so that, for several years,

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" upon the pretence to improve, the care of this " revenue was wholly neglected. I, thereupon, " mentioned to my Lord Rochester a necessity of " having a surveyor, that is a reasonable man, " and recommended Mr. Coltclough, and pro- " mised my assistance and instructions; and he " was employed by the commissioners of the " treasury, and I gave him instructions how he " should proceed. But my Lady Yarmouth, Mr. " Brunskill's patroness, hearing of it, went to the " king, and claimed it as right that Mr. Brunskill " should have it, and no man else employed: and " so stopped Mr. Coltclough's patent; and it hath " been neglected ever since. The king is now " pleased to declare he will have this revenue " taken care of, and recommended it to the lords " of the treasury, to find a fit person. Mr. Brun- " skill's patent, if he hath any, must first be de- " termined."

The project failed.

It seems, this green wax project began with a pretence of pure collection, but soon became an interest; and, at first, the discourse ran only upon the casual profits; but, afterwards, all penalties of statutes were to be put into the patent. And that explains the inefficacy, and, then, the restlessness of Brunskill. For, first, he would not collect the revenue, that it might seem little, and be the readier granted. And nothing would serve him but a grant of all the revenue arising by the

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king's courts. And when businesses, of this nature, want shoulders at court to heave them forwards, then great men, and topping ladies (hopeful solicitrixes) are taken in for shares, and so let into the secret. And if it had not been for such knotty inflexible pieces, as these judges, and particularly his lordship who had the labouring oar, and took care rightly to inform his majesty, and his ministers, of the foul practices (intentionally) couched under fair pretences, the project, to the infinite vexation of the people, and little or no profit to the crown, had, probably, taken effect.

Solicitous against all abuses.

I have not here observed any order of time in the mention of these passages, nor do I intend it more in those that follow; it being, as I take it, not material, so long as I keep myself within the proper stage of his lordship's life, that is, his being a judge of the common law. I must needs say, that that was his peculiar faculty; within the sphere of which he was scarce ever at a loss, or failed to extricate, even on a sudden, the most perplexed causes and questions of law. I may not here give a character of his justice without repetition, and that of the panegyric kind; of which too much, though never so true, is fulsome. But I may knowingly affirm that his integrity was untainted; and he never warped to grieve any adversary for party, or in particular, nor was shy in doing right to his friends for fear of oblo-

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quy, for he knew what he did, and always gave reasons in public that would sustain it. But he showed his universal good will by nothing more than a restlessness under abuses that tended to grieve mankind. No one can think any man, not ambitious of doing good, could be so taken up with spying out what was amiss, and suggesting remedies, as he was. Of all which I shall, in the following sheets, give a particular account.

Of the necessity of regulations in the law.

All the while his lordship was chief justice of the Common Pleas, and had leisure, he bent his thoughts very much to regulating what was amiss in the law. For it is impossible but, in process of time, as well from the nature of things changing, as corruption of agents, abuses will grow up; for which reason the law must be kept as a garden, with frequent digging, weeding, turning, &c. That, which in one age was convenient, and, perhaps, necessary, in another becomes an intolerable nuisance. His manner was, as any abuse, or regulation, came in his mind (of which very many, from the multitude of business that passed him, must happen), he set it down upon some by-paper, or book, used for noting. And then, upon a second view, and reconsideration, he digested his thought, and brought what he had so digested, into the form of a tract, and thereon designed to prepare acts of parliament, as he had encouragement and opportunity. He had a great hand in

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the statute of frauds and perjuries, of which the Lord Nottingham said that every line was worth a subsidy. But, at that time, the Lord Chief Justice Hales had the pre-eminence, and was chief in the fixing that law: although the urging part lay upon him, and I have reason to think it had the first spring from his lordship's motion.* For I find in some notes of his, and hints of amendments in the law, every one of those points which were there taken care of; and divers other matters, which he set his mark upon, have since been regulated by acts of parliament express.

His lordship most clearly for a register.

He was extremely desirous that a register of titles to land should be settled, and he worked seriously upon it. There were frequent attempts in parliament to establish one; but none ever was presented to them tolerably digested; and so they came to nothing.† And besides, the matter being a subject of great skill, as well as foresight, in the law, the gentlemen of the country are afraid, and hearken to the learned as when they

* Sir Leoline Jenkins is also said to have had a share in the framing of this celebrated statute. Lord Mansfield doubted whether the bill was drawn by Sir Matthew Hale, since it was not passed until after his death, and was introduced in the usual manner, and not upon any reference to the judges. (1 *Burr. Rep.* 418.)

† This subject appears to have attracted much attention at the period mentioned in the text. See the *Harleian Miscellany*, vol. vi. p. 323, vol. vii. p. 483, vol. viii. p. 20.

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settle their estates; and such learned gentlemen, admitting they were willing to it (as they are reputed, for the sake of interest in practice, not to be), they would be scrupulous enough; but, being averse, they raise a mist of scruple upon every such bill, and represent the possibility of frauds in the offices to be so dangerous to men's titles, that the country gentlemen, who do not take upon them to judge, and will trust nobody, fly back; and there falls the bill. And so it will ever be, until they trust some persons with the conduct of it, who are capable and willing to promote it. For, as to the tremendous frauds, that are so much exaggerated by some, I must needs allege that records of every court of justice are obnoxious to ten times more; and if those courts were now to be settled, no man could agree to such looseness of keeping records, that concern men's estates, as there is to be observed: and yet they do the work they were instituted for; and so would registers, if they were once established. As, for instance, the register of the Fens hath not had one fraud exercised upon that office, since, by the act for dividing the great level, it was erected.

Hales wrote so as amounted to an opposition.

My Lord Chief Justice Hales had turned that matter in his thoughts, and composed a treatise, not so much against the thing (for he wishes it could be), as against the manner of establishing of

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it; of which he is not satisfied, but fears more holes may be made than mended by it. My Lord Chief Justice North, on the other side, thought that it was not only practicable, but absolutely necessary, and, if it were not done, that forgery would soon be the best trade in England. That used to be his expression.

His lordship's reasons and answer to Hales.

And because some used to say that forgeries were not frequent, or that they were commonly unsuccessful, because, on careful examination at trials, they were, for the most part, detected; he bethought himself of all the successful forgeries that came to his own knowledge, or that he really thought to be so in the course of his business; and of them he made a list. The modern way of conveyancing is so private, that no wise man, be he never so careful, can be aware of it; and his lordship thought the law ought to be so settled that a wise and careful man might be sure of his title, whatever became of the supine and negligent, and that the old rule is true, viz. *quod vigilantibus et non dormientibus obveniunt leges.* That is, that laws are made for the benefit of those that are watchful and diligent, and not of the careless and negligent.

Of acts of parliament.

After his lordship's death, I found, among his papers, several draughts of acts of parliament, which he had prepared to put forward as opportunity offered. By those I perceive his intent

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was not to crowd into one bill many matters; but to pass them in separate bills, for readier dispatch in the two houses. Else, any one matter, of long debate, retarded all the rest upon which no question was made. If the gentlemen of England in parliament would find in their hearts to trust fit persons, as the chiefs of the law for instance, (who, by their public stations, are answerable to all mankind for their behaviour,) taking whom they would to their assistance, and act, debate, and hear in public; to draw up a law out of particulars, as the ancient way was, and then, unless gross mistakes are showed, to pass it upon their authority, there would be some hopes of an effectual regulation, in a multitude of particulars that all agree need it.* And it is believed that the *vetera statuta*, or ancient laws, were so made, by the judges and great men, in vacation of parliament, either pursuant to petitions, before, or afterwards, authenticated there; otherwise they could not have been framed so orderly, concise, and proper as they are. I must not enlarge upon these subjects here, lest I anticipate the proper place of them, or, what is worse, repeat when I come there.

* Sir M. Hale, in his "Considerations touching the Amendment of Laws," has recommended a course very similar to the one here pointed out. (*See Hargrave's Law Tracts*, p. 273.)

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Endured no discourse of causes depending.

But, as to his lordship's method of trying causes, in which his justice was most conspicuous, it may be well conceived that he, who, as a pleading counsel, had run through the whole course, and had all possible experience of that practice, and being, withal, capable and upright, as he was; coming to superintend others, must needs be a master-workman. Who so fit to command in the place of general, as he who had trailed the pike, and was afterwards, through all the services of war, advanced to the post of chief? In the first place, he would not endure that, in private conversation, with, or about him, any one should speak of causes depending in his court. It was said of a great master of painting, Lely, that he would not willingly see a bad picture; for he never looked upon one, but it tainted his pencil: so there can be no discourse of a controversy, which doth not leave a tinct of prejudice. A man cannot read of such matters, nay, overlook gamesters, without entering into party. Justice, therefore, should be deaf, except in the seat, and blind there. Sometimes, very great men would be so overseen, as to speak to him of causes, whom he could not slight; and, to such, his carriage was passive, showing respect, but saying nothing, or what signified as little; and he ever suspected a cause that used such means, and hath often reflected on them in court. The gentleman

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the Hon. Roger North) whom his lordship favoured to be almost continually in his conversation, and even to ride with him, in his coach, to and from his courts, when he sat upon trials, had the honour of his lordship's express declaration that, "in all the course of his practice under him, he never spoke privately of any cause depending:" which, considering the constant society, and familiarity, few would imagine; but I can affirm it to be critically true.

Next, in his lordship's conduct of trials, he was very careful of three matters. 1. To adjust what was properly the question, and to hold the counsel to that; for he, that has the worst end of the staff, is very apt to fling off from the point, and go out of the right way of the cause. 2. To keep the counsel in order; for, in trials, they have their parts and their times. His lordship used frequently to inculcate to counsel the decorum of evidencing practice. 3. To keep down repetition, to which the counsel, one after another, are very propense; and, in speeching to the jury, one and the same matter, over and over again, the waste of time would be so great that, if the judge gave way to it, there would scarce be an end; for most of the talk was not so much for the causes, as for their own sakes, to get credit in the country for notable talkers. And his lordship often told them that their confused harangues disturbed the order

Conduct in trials.

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of his thoughts; and, after the trial was over, it was very hard for him to resume his method, and direct the jury to comprise all the material parts of the evidence. Therefore he was positive not to permit more than one counsel of a side to speech it to the jury, by way of summing up the evidence; and he permitted that in such a way as made them weary of it. For, in divers sorts of trials, he wholly retrenched it; and where he observed much stiffness, and zeal of the parties in a cause, then, after the evidence was over, he would say, "Come, make your speeches;" and then sat him down: and that looked with a sort of contempt of their talents, which gave them a distrust, and discomposed their extempore so much that, for the most part, they said, "No, we will leave it to your lordship." And thus the abuse, by fastidious talk, wore away; and the practice, before him, was so well known, as it became, at length, a pure management of evidence, and argument of law.

Temper in detecting frauds.

He made a great difference in the nature of causes; for if there was a suspicion of fraud, false dealing, or forgery, he was a most strict examiner, and would canvass the evidence to a scruple, giving all latitude to the counsel to refine, and suggest where he might, if possible, lay hold of a thread, in order to gain a clear solution of the fact: For it was not enough that he, in his private opinion,

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thought a deed forged, or the like; but he must have evidence, by the force of which he might show it so plain as would satisfy the auditory, as well as the jury. And, after all, if he could not arrive at that, he let it go, and directed the jury upon the case, as it stood upon the evidence, whatever it was. I wondered once to find him, after an hour's sticking and picking upon an evidence, at last, all at once, give it up. I asked him, "Why he left off so abruptly?" He told me, that he discerned a roguery; but the evidence was not sufficient to justify him to direct the jury to find it; and, thereupon, he directed as the strength of the evidence required to find, even contrary to his own private judgment. For, in points of fact, whereof he was neither judge nor witness, he must have warrantable reasons for what he said, or insinuated to the jury, who only were the proper judges; and the rather, because they seldom found against his decisive directions; and his suspicions were not to guide their verdict upon oath. But, in other sorts of causes, as about boundaries, ditches, ways, trees, and the like; which depend upon mere testimony, and not sagacity and penetration, for extracting facts out of circumstances, he took less pains, and, after the question was stated, he used to say, "Call your witnesses;" and sat down till something called him to observe. He allowed no cross examining,

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till one side had done with the witness; nor would he allow the defendant to say any thing, but only to cross examine, till the plaintiff had made an end; and then he heard the defence at large, and did not allow the plaintiff to interpose, but in the same manner; and always took care that the counsel examined all their witnesses, till they said they had no more: knowing that a countryman never thinks his cause tried, unless all his witnesses are heard.

Supplanted the arts of counsel.

He was very good at way-laying, and disappointing the craft of counsel; for he, as they say, had been in the oven himself, and knew where to look for the pasty. Serjeant Maynard was a very able practiser, and used to lay traps for the judges, and very cunning ones; but if he discerned that he was observed, he straight gave it up, and contended not upon a fallacy, which he foresaw would be resolved. Sir William Jones sometimes came before his lordship, at the *nisi prius*, and used art enough, and was very angry when it did not succeed: As, for instance, by such forms as these: "If, my lord, we prove so and so,—— then, so and so ——" and, after that, wait for the judge's answer. If the judge said, "Ay, if you prove that indeed, then, &c." the lawyer concluded the jury was prepared so far; and if, in the course of his evidence, he could charm them to think he had proved that matter, although not sufficiently,

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he carried the cause: at least, in the proceeding, he so entangled the judge, that he could scarce get clear. His lordship, in such cases, always declined answering any thing, but said only, "Call the witnesses, and prove what you can." Then the counsel at it again: "But if we prove ——" "When you have proved," said the judge, "I will tell you what I think, and not before." For his lordship knew that way of evidencing to be a sure sign that the proof did not come up to the point; and so must be supplied by opening and concessions before-hand. This was one of the chief arts practised by Sir William Jones, upon trials at law; which the judges meeting with, in the manner I have mentioned, usually put him out of temper.

A rased and forged acquittance discovered.

It would be endless to show all the remarkable trials that came before his lordship: I shall therefore only, as a diversion, subjoin one or two of them. Once, a cook brought an action against one Mr. Grant, of the Inner Temple, for diet delivered in his chamber. This Grant had a brother and a mother; and they dieted together in this chamber. At the trial, the defence was, that the other brother, by agreement, was the housekeeper, and was to pay for the provisions; the rest did but diet with him; and the mother was the witness to prove it: so the cook had mistaken his customer. But his lordship was of opinion,

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that the owner of the chambers was the housekeeper, as to all foreigners, who look upon, and trust, the visible owner, whatever the agreements among themselves may be. Then they said they would prove the cook paid off to 1677, and gave him his acquittance. The cook started forth from the crowd; and, "My lord," said he, very quick and earnest, "I was paid but to 1676." At that moment his lordship concluded the cook said true; for liars do not use to burst out in that unpremeditated manner. This was one of his lordship's marks, whereby he judged of men's sincerity; and it seldom failed him. Having therefore this opinion of the fact, he eyed the acquittance thoroughly, and saw 77 as plain as could be. He asked the cook, again and again, if he was sure; to see if he would stammer or hesitate, as liars will often do; but his answer was blunt and positive, as before. Then his lordship, in the *nisi prius* court in London, sitting under a window, turned round, and looked through the paper against the light; and so discovered plainly the last figure in the date of the year, was 6, in rasure; but was wrote 7 with ink. He made the jury look through it, as he did; and the cause was, in that point also, determined for, which else had gone against, the poor cook. The moral of all this may be, that "falsity is never safe."

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Mr. Serjeant Maynard had a mind to punish a man who had voted against his interest in a borough in the West, and brought an action against him for scandalous words, spoke at a time when a member, to serve in the House of Commons for that borough, was to be chosen. And, after his great skill, he first laid his action in the county of Middlesex: and that was by virtue of his privilege, which supposes a serjeant is attendant on the court of Common Pleas, and not to be drawn from the county where the court sat. And then, in the next place, he charged the words in Latin, that, if he proved the effect, it would be sufficient; whereas, being in English, they must prove the very words to a tittle; and those were a long story that used to be told of Mr. Noy, and all the cock lawyers of the West. And this was tried before his lordship at the *nisi prius*, for the Common Pleas for Middlesex. The witness, telling the story, as he swore the defendant told it, said that a client came to the serjeant, and gave him a basket of pippins, and every pippin had a piece of gold in it. "Those were golden pippins," quoth the judge. The serjeant began to puff, not bearing the jest: so the witness went on. "And then," said he, "the other side came and gave him a roasting pig (as it is called in the West) and in the belly of that there were fifty broad pieces." "That's good sauce to a pig," quoth the

Of a comical action, brought by Serjeant Maynard.

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judge again. This put the serjeant out of all patience; and speaking to those about him, "This," said he, "is on purpose to make me ridiculous." This story being sworn, the judge directed the jury to find for the serjeant; but in the court, the judgement was arrested, because the words were but a land story, and went, as mere merriment, over ale, without intent to slander. Such bitterness flows from the sour spirits of old pretended republicans. It had been well if no other instances, but such as this, were extant to show it. This happened when I attended; and so know the matter to be, as above, literally true. But it is hard to believe that such a poor revenge could have been put into act by so great a man. And I should almost distrust myself, if I had not been partaker of a more wretched come-off with the same person; which I shall relate, conceiving it to be full as material to show little things of great men, as great things of little men. One afternoon, at the *nisi prius* court of the Common Pleas, in Westminster-hall, before the judge sat, a poor, half-starved old woman, who sold sweetmeats to schoolboys and footmen, at the end of the bar, desired the serjeant to pay her two shillings, for keeping his hat two terms. She spoke two or three times, and he took no notice of her; and then I told the serjeant, "the poor woman wanted her money, and I thought he would do well to pay her." The ser-

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jeant fumbled a little, and then said to me, "Lend me a shilling." "Ay, with all my heart," quoth I, "to pay the poor woman." He took it, and gave it her; but she asked for another. I said, "I would lend him that also, to pay the woman." "No, don't, boy," (said he,) "for I never intend to pay you this." And he was as good as his word; for, however he came off with that woman, having been, as they say, a wonderful charitable man, I am sure he died in my debt. But in this manner (as I guess he intended) I stood corrected for meddling.

Of his rigors, and value.

This great man, as I must call him, since his natural and acquired abilities, and the immense gains he had by practice, justly entitle his name to that epithet, was an anti-restoration lawyer. In 1684, I heard him say in the court of Chancery, of a cause then at hearing, that he was a counsel in that cause in the year 1643. His name is in Crook's Reports, in 3 Car. His actions, in the rebellious times, made the act of indemnity smell sweet. And, afterwards, he had the cunning to temporize, and get to be made the king's eldest serjeant, but advanced no farther. His lordship must needs have much conversation, as well as intercourse in business, with this eminent practiser in the law; but, as in other cases of adverse party-men, so here, there could be no cordial friendship between them; but a fair and

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reasonable correspondence there always was. The serjeant ever took in with proceedings that maligned his lordship; but he never outwent discretion, so far as some did, to appear directly, and nominally, against him, which must have certainly rescinded all kind of correspondence. When his lordship sat in the chair of the Common Pleas, he practised under him, and had always the respect due to his known abilities. But though the serjeant never failed to conform to all things required of him in public, as oaths and tests, &c., yet, for allt hat, he continued a favourite in the Presbyterian congregations; and is at this day, among them, extolled as a saint, and his wonderful charities, and other good works, related: and, to give him his due, he was, to his last breath, at the bottom, true as steel to the principles of the late times, when he first entered upon the stage of business. And, whatever we, that were frequently at his elbow, knew of his saint-like administration of himself and his wealth, it is fit to be silent, because we should not speak ill of the dead. And, in that tendency, I shall only observe farther of him, that he practised before his lordship in all the king's courts where he had sat as judge; and, being an artful, as well as learned lawyer, would lay notable snares; but, when discovered, never persisted, but sat down; and, for the decorum of bar practice of the law, was an

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excellent pattern, and held a fair correspondence, and used a decent respect towards his lordship all his time.*

* The foregoing character of Maynard is at once unjust and inconsistent. His "actions in the rebellious times" had nothing in them to impart that agreeable odour to the Bill of Indemnity of which the author speaks, nor was "his cunning to temporize" very consistent with his being "as true as steel to the principles of the late times, when he first entered upon the stage of business." A more correct opinion of the serjeant's character may be gathered from the following parallel between him and his celebrated contemporary, Whitelocke.—"As to old Maynard, perhaps you may understand him best by comparison. He and Whitelocke were both lawyers of family, and in the long parliament; both of the Presbyterian faction; both learned and eminent in their profession, moderate, sage, and steady—so far they agreed. In this they differed: Maynard had strong parts with a serious modesty; Whitelocke was weak and vain, and by these defects only self-interested. A sense of honour made Maynard stick to the Presbyterian faction, and to fall *with* them, but, as he had much phlegm and caution, not like Hollis and Stapleton to fall *for* them, so that he was never marked out by the Independents for their first sacrifice. * * * * Maynard, by adhering steadily, but not violently, to the party he set out with, was reverenced by all; and had he not been more intent on the affairs of his profession, might have become considerable by station. He went through the whole reign of Charles and James II. with the same steady pace, and the same adherence to his party; but by his party I rather mean Presbytery for the sake of civil liberty, than to civil liberty for the sake of Presbytery. He lived, you know, to see the Revolution, and made that fine reply to the Prince of Orange's compliment." (*Warburton's Letters to Hurd*, p. 211.) The

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Interest in the West.

Now it is high time to bring his lordship forward, into that part of his office that requires him to be a judge in the country circuits; which is all the shadow we have of the ancient iters, which now are restrained to the crown law wholly, except the commission of assizes and *nisi prius*, which come in by statute provision. But, anciently, the judges itinerants were for all pleas, which, after the Conqueror had taken cognizance of the debts of the laity to his own court, was a great ease to the country, who, for their greater matters, must have followed the king's court, wheresoever he might happen to be. His lordship had no charge of determining capital offences, but here; and that was one thing which made him esteem his office in the Common Pleas so much: whereas the chief justice of the King's Bench hath almost continually that kind of work upon his hands. He made the western circuit his choice; not for the common cause, it being a long circuit, and beneficial for the officers and servants, but because he knew the gentlemen to

anecdote of the "fine reply," is thus well told by Burnet. "Old Serjeant Maynard came with the men of the law. He was then near ninety, and yet he said the liveliest thing that was heard of on that occasion. The Prince took notice of his great age, and said that he had outlived all the men of the law of his time. He answered, "*He had like to have outlived the law itself, if his Highness had not come over.*" (*Own Time*, vol. iii. p. 1377.)

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be loyal and conformable, and that he should have fair quarter amongst them. And in that he was not mistaken; for, after a few circuits passed over, they found his measures and their desires consonant in all things; whereby he became not only well accepted, but did also contract a sort of alliance and strict friendship with much the greater and most considerable part of them. And that interest stood him in good stead, in time of need: for so considerable a body, and so united, as the western gentlemen in parliament were, did so firmly ensconce him, that his enemies could never yet get a clever stroke at him. Dr. Mew, late Bishop of Winchester, whom (from a black plaister he always wore on his cheek, to cover a place where, in the late wars, he had been wounded) they called Patch, in his stiff way, used to say that the Lord Chief Justice North was *deliciæ occidentis*, or the darling of the West. But once his lordship, and all of us of his train, had like to have come off but poorly at Exeter assizes. It was well for us that we were known there, or to pot we had gone. It will be guessed that something comical is coming; and really so it is, and fell out thus. There was one Mr. Duke, a busy fanatic, whom old Sir Edward Seymour, father of the late Speaker, used to call Spirit Po; that is, a *petit diable*, that was presto at every conjuror's nod. He was a common runner up

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and down on factious errands; and there could not be a meeting in the country, for business or mirth, but Spirit Po was there. This gentleman, with irresistible importunity, engaged the judges to take a supper, and lie at his house, in the way to Exeter. It was impossible we could reach so far that night; and his lordship was not averse to seeing variety of gentlemen's seats in the country; and that was (justly) reputed a neat one: so, little suspecting what happened, we complied. All things, but one, were well; and that was very unexpected and rude. The gentleman had not the manners to engage the parish minister to come and officiate with any part of the evening service before supper; but he himself got behind the table in his hall, and read a chapter, and then a long-winded prayer, after the Presbyterian way. The judges took it very ill, but did not think fit to affront him in his own house. Next day, when we came early in the morning to Exeter, all the news was that the judges had been at a conventicle, and the grand jury intended to present them and all their retinue for it; and much merriment was made upon that subject.

The Cob of Lyme, in Dorsetshire.

Besides seeing the most considerable seats of the nobility and gentry, in the countries where he went, which, to say truth, he could not well avoid, being so much invited, and nobly entertained as he was, not more out of the ordinary

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respect paid to judges, but as one of his majesty's best friends, and whom they regarded, not more on account of his quality, than for his personal character and qualifications, which had entitled him to their esteem and friendship, his lordship took the opportunity to join thereunto an inspection of such curiosities as were famed in the several countries he passed through; as, in particular, the Cob at Lyme, a small port in Dorsetshire, that is situate in the Cod (as they term it) of a bay, where there was no river, or land-lock, provided by nature to prevent the certain loss of ships at anchor there; and, of all places upon the coast of England, least to be suspected for a good port: but art and industry will do wonders; for all the requisites of a safe harbour are supplied by this Cob. The small vessels, which serve the trade of the town, consisting chiefly in woollen manufacture of that country, carry on the trade outwards; which is very beneficial. And, in that respect, King Charles II. allowed, out of the customs of that port, 100*l.* per annum towards the charge of maintaining the Cob. But whether the same be continued or begged off, I know not. His lordship had the compliment of a ship-master, who cleared his vessel, and came to an anchor without the Cob, and invited him to come on board and take a turn at sea; which he accepted, and we went on board, and, weighing anchor, stood west

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about an hour and a half, and then returned, and landed at the Cob; and surely a most delicious turn it was, for the weather favoured us. The Cob is a mole built in the sea, about two furlongs from the town, and named from the cobble stone, of which it is compiled. There is not any one like it in the world: for though it is an immense mass of stone, of the shape of a demilune, with a bar in the middle of the concave, no one stone that lies there, was ever touched with a tool, or is bedded in any sort of cement; but all, being pebbles of the sea, are piled up, and hold by their bearings only, and the surge plays in and out, through the interstices of the stone, in a wonderful manner. That this must often decay, is certain; for the best-cemented square stone will scarce hold against the surge. But there is warning enough to alarm the town to repair, and, thereby, to prevent any great ruin of it; for, sometimes, a swamp will appear in the flat top where they walk; and, when that is perceived, they go to work, and take down all that part, and build it up from the bottom; and nothing less will prevent the downfall of much more, sooner or later, as the seas rage more or less against it. And it may happen that some new foundation stones are to be laid. Those are of the largest sort that can be got; and they search them out upon the coast, and, mounting them upon casks chained together,

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with but one man mounted upon them, he, with the help of a pole, conducts it to the place where it is to lie, and then, striking out an iron pin, away go the casks, and the stone falls in its place. The vessels of burthen are laden and unladen by horses, turning and returning upon the sand, between the Cob and the town: and they have no drivers, but are charged with bales (for instance) at the warehouse, and away they trot to the ship side, and stand fair, sometimes above the belly in water, for the tackle to discharge them; and then they gallop back to the warehouse for more; and so they perform the tide's work, and know, by the flood, when their labour is at an end. I must own, I could scarce have believed this description, if I had not seen the place, and the poor horses at work: and I cannot but wonder that our topographers have taken no more notice than they have done of it. * And it is not the only obvious curiosity in England that the best of them have left out.

Harbours in the West channel.

His lordship visited the town of Pool, the place that gave the spring to *quo warranto's*, as is related in the Examen. In that harbour the ebb and flood work alternately every six hours; and his lordship was informed that the like was observed in the ports of Southampton and Chichester: but nothing so regular and strong as here; and, being inquisitive into the reason of it, he was told that

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the ebb at low water, between Hampshire and the Isle of Wight, ran so strong that it shot into the harbour of Pool, lying in the line of its course; so that when it was low water at Hurst, it was high water at Pool. It appears by all the harbours of this coast, that the convenience is owing to a large inlet of water, within the land, every tide; which, venting at low water, scours the channel. It is wonderful that, at Yarmouth, they do not provide to pen in a back water, rather than build promontories which shall fill up faster than they can build, and so, literally, make ropes of sand.

Great organ at Exeter.

His lordship, agreeably to his great mastership of music, took great notice of the organ in the cathedral church at Exeter, where the two side columns, that carry the tower, are lined with organ pipes, and are as columns themselves. His lordship desired the dimensions of the great double diapason; and the account, as returned, is thus:—

	Feet.	Inches.
Speaking part, long	20	6
Nose	4	0
Circumference	3	11
Diameter	1	3
	Hogs.	Gall.
Content of the speaking part	3	8
		lb.
Weight		360

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This is heard plainer at a distance than when near, as also louder: and, behind that, and the other large doubles, are placed large wooden pipes to help them into their sound, which otherwise would come on very slow, or, perhaps, not at all. One, being near enough, may by the touch of the hand, discern when it speaks, and when not. How it is tuned, whether by measure or the beats, we were not informed; and, bating their account of it, which was curious and diverting enough, I could not be so happy to perceive that, in the music, they signified any thing at all, but thought them made more for ostentation than use: for there are terms in sound which will not be exceeded; for, when the vibratory pulses are so slow as may be distinguished, sound vanisheth; which is, nearly, the case of this great pipe. His lordship was always well pleased when his stages lay so that the Sunday was spent in a cathedral town. For he was always affected with the church service, and had the books of the hymns and anthems always brought to him.

Plymouth and Mount Edgcomb.

His lordship went down to Plymouth, and saw the town, which, as other marine towns, is crowded together, and the streets are narrow. But the fort, which was built by King Charles II. with the marble of the place, and lime of the same sort of stone burnt, is a worthy spectacle, especially for its glorious prospect, overlooking the harbour,

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which consists of two waters, one called Hamose, and the other Catwater. And, as the voyage is out or home, the ships are moored in one or other; because, then, whatever wind serves for the voyage, takes the ship out of the harbour; which is a perfection that few, if any, ports in the world can boast of. All this lies below the castle, and in view of the fort, being seen as in a map, or, rather, a flying prospect; and ships, under sail, look like cockboats. So high above them is the fort mounted. Opposite to the castle lies Mount Edgcomb, where his lordship and his company were nobly entertained by Sir Richard Edgcomb, whose lady was a near relation. The hall riseth, and is lighted above the rest of the house that turns round it; which the architects call a Grecian hall. The park, on more than three sides, is paled with the sea; and the deer-hunting is as much by water as by land. I stole from the company, and walked to the cliff towards the main, and found means to get down, and passed on hideous rocks towards the sea; but, returning, I thought I should never have gained the top again. Such a vast height was I surprised with in my ascent.

Cornwall. There was no opportunity of penetrating into Cornwall yet, because the judges, for compendium of travel, took the first town, upon the borders, capable of receiving them; which is Launceston,

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where is an old ruined castle, and nothing else worth naming. The Cornish men are very fierce and contentious, and strangely given to indict one another. The traverses of these indictments, tried at the assizes, make good fodder for the lawyers; for they are always many, and beyond what are had in most of the circuit beside, and well-metalled causes. But this, as they say, prevents bloodshed; which would follow if revenge had not that vent. The trade, here, lying mostly with Londoners and foreigners, the people have a better English dialect than those of Devonshire, whose common speech, I think, is more barbarous than in any other part of England, the North not excepted. We were told that Saltash, three miles up the river from Plymouth, was, anciently, the port town; for, in old time, so high within land was safer than nearer the sea: and well it might be so to small vessels. But ever since ships have been built larger, partly for better roads, and partly for better pilotage, the port towns have crept nearer the main; as they say would happen upon the Tyne; and Shields would become the port town, if Newcastle had not a privilege that no common baker, or brewer, shall set up between them and the sea.

Taunton-Dean, Wells, and Bristol.

The return from the circuit was usually by Taunton-Dean in winter, and by Wells and Bristol in summer. Both of them are great towns, and, to strangers, very remarkable. The latter is

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the cathedral of the bishop of Bath and Wells; the other a very populous, but, withal, a rugged unhewn town, and the roads of the country mere causeways of sharp flints. Near this place were two great families, one called Orchard Portman, the other Orchard Windham, at both which places his lordship had princely entertainment. The places, noted to be seen there, are Oaky Hole, Chedder cliffs, and Mendip hills. But I shall not stay to describe them, but make for Bristol, which is a marine trading city, with a small cathedral. It is remarkable there, that all men that are dealers, even in shop trades, launch into adventures by sea, chiefly to the West India plantations and Spain. A poor shopkeeper, that sells candles, will have a bale of stockings, or a piece of stuff, for Nevis, or Virginia, &c. and, rather than fail, they trade in men; as when they sent small rogues taught to pray, and who accordingly received, actual transportation, even before any indictment found against them; for which my Lord Jeffries scoured them, as is related elsewhere. In a word, pride and ostentation are publicly professed. Christenings and burials pompous beyond imagination. A man who dies worth three hundred pounds, will order two hundred of it to be laid out in his funeral procession.

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Incidents there.

His lordship was there in summer 1680, which was next before that session of parliament that pursued the abhorrers; and, as the times then showed some dawnings of loyalty to the crown, it appeared more in Bristol than one would have expected. One Floyd was there, a true Welshman, as I believe; for I never saw or heard any human thing speak so lofty as he did, and all in humour and tags of Latin. He declared for *sub* and *supra*, and much more at that rate. There was one Row in office of swordbearer; which, in that town, is pronounced sorberer. I thought it sounded like Cerberus; and not amiss, for the fellow was deep in the Rye plot, for which he fled. He was strangely saucy and impertinent in his office. And once the judge looked back for one of his servants, and he comes forward, and "I'll wait on your lordship," said he. "You wait on my lord, sirrah," said the mayor? "you shall wait upon me, and I'll wait upon my lord."

Account of Bedloe's examination.

His lordship escaped a scouring here in the year in which Oates's plot raged. For Captain Bedloe came down to the assizes with a design to enter into his lordship's conversation, and, what with discoveries, and pretended discoveries, to have put the sham plot upon him; as, probably, he had done if Providence, and his usual forecast and caution, had not kept him at a distance. I am

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not concerned to display the particulars here, because they are fully related in the Examen;* but however think it proper to insert his lordship's narrative for the sake of his justification in this affair, in his own words, as he sent it to Secretary Jenkins, with his letter.

His lordship's narrative.

"*Account of the examination of Captain Bedloe at Bristol, 16th August, 1680, given to the House of Commons.*†

"At my first coming to Mr. Rumsey's, where I was to lodge at Bristol, upon Monday the 16th day of August, in the afternoon, being the first day of the assizes, Sir John Knight came to me and said that Mr. Bedloe lay dangerously ill of a fever, and had little hopes of life, and desired that I would give him a visit, that he might impart something of great consequence before his death. —I told him I would give him a visit that night after supper about nine o'clock, if I might be satisfied of two things: first, that there was no infection in his distemper: secondly, that the time would not be inconvenient, but he might discourse to me without prejudice to his condition. After a little while his physicians came to me, and assured me there was no danger of infection, and the time I had appointed would be most

* Page 252, *et seq.*

† Inserted in *Howell's State Trials*, vol. vii. p. 1493.

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proper, for, commonly he took his repose in the afternoon, and at nine o'clock he would in probability be refreshed, and fit to discourse with me. — Thereupon I declared my resolution of going; and desired the company of the two sheriffs, and my brother Roger North, and appointed my marshal William Janes to go with me. As we were upon the way, Mr. Crossman, a minister in that city, told me Mr. Bedloe had desired him to come with me to him. I said it was very well, and I should be glad of his company. Whereupon we went all together, and being come into the room where Mr. Bedloe lay, I saluted him, and said, I was extreme sorry to find him so ill. I did imagine he had something to impart to me as a privy counsellor, and therefore, if he thought fit, the company should withdraw. He told me, that needed not yet, for he had much to say which was proper for the company to hear: and having saluted the sheriffs, and Mr. Crossman, he began to this purpose:—

Bedloe's speeches in discourse.

"That he looked upon himself as a dying man, and found within himself that he could not last long, but must shortly appear before the Lord of hosts to give an account of his actions; and because many persons had made it their business to baffle and deride the plot, he did, for the satisfaction of the world, then declare upon the faith of a dying man, and as he hoped for salvation, that

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whatsoever he had testified, concerning the plot, was true; and that he had wronged no man by his testimony, but had testified rather under than over what was truth; that he had nothing lay upon his conscience upon that account, that he should appear cheerfully before the Lord of hosts, which he did verily believe he must do in a short time.—He said he had many witnesses to produce who would make the plot as clear as the sun, and he had other things to discover which were of great importance to the king and country; hereupon, he making some pause, I told him the plot was so evidently made out, that no reasonable man, no protestant, I was sure, could doubt of the truth of it; but he ought not to conceal any thing that concerned the king so highly: he ought to disclose his whole knowledge in matters of treason, that traitors may be apprehended, and secured, who otherwise may have opportunity to execute their treasonable designs.—To this he replied that much of that which he had not discovered, was to corroborate his former testimony; that he had concealed nothing that was absolutely necessary to the king's preservation; that he thought not fit to accuse more persons till he had ended with those he had already accused. He expressed great grief and trouble at the condition of his poor king and country (so he termed

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them), whom he knew at that time in imminent danger from the jesuits, who had resolved the king's death, and he was sure they would spare him no longer than he continued to be kind to them. He said he was privy to their consultations at Salamanca and Valladolid, where they used to observe the favourable conjuncture they had to introduce their religion into England; which consisted in their having a head, who must be set up, whatsoever came of it, and, if they let slip that opportunity, they should never have such another; for, without a head, they could do nothing. He said farther, he knew the wickedness and resolution of jesuits, they stuck at nothing to compass their own ends. They had attempted to poison him, but he had escaped.

Manner of his examination.

"When he had finished this discourse (which lasted about a quarter of an hour) I asked him if the company should now withdraw, and he said, yes; and ordered his nurses to go out, and only his wife to stay to tend him. And thereupon all went out, saving Mrs. Bedloe and myself, and my servant William Janes. Then I told him I thought it convenient that what he should say unto me should be upon oath; he replied, it was necessary it should be so, and called for a Bible; but my servant having brought a book with him, administered the oath to him, and, laying his paper on

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a chair by the bed-side, wrote down his deposition as he delivered it.—When Mr. Bedloe had concluded, and said that was all he had to inform me of, I took the paper, and read it over to him distinctly, and he approved it, and signed it, laying the paper upon a pillow. I thought it not fit, considering his condition, to perplex him with questions, but took his information as he offered it, and held no discourse with him when the company was withdrawn, but concerning the true setting down his depositions. And when he seemed to be weary, to mind him of taking cordials, which his wife reached to him as he desired them.

Copy refused.

"The next day Mr. Bedloe's brother came to me, and told me his brother desired a copy of the deposition he had made before me, but I told him I had well considered it, and could not give him a copy without the king's leave, but I would move the king in it, and, if he gave leave, I would take care to send one to him; and Mr. Bedloe's brother told me, that it was his brother's desire that I should recommend to his majesty his condition; that his sickness was very chargeable, and move his majesty for some supply of money for his subsistence, which I promised to do.—This is all I can recollect of what passed upon this occasion, and is in substance true, but the very words or order I cannot remember."

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LETTER TO MR. SECRETARY JENKINS.

"SIR,

"I ALWAYS intended to write from hence, to pay my thanks for the whole circuit, which was much more pleasant by your favour of holding a correspondence with me; but now I have some business of importance: for as soon as I came to this city, I received a letter from Mr. Bedloe by Sir John Knight, that he being very ill, and in the judgment of physicians in great danger of death, had some business of great moment to impart to me. I, knowing the man and the season, would not refuse the pains to give him a visit; and being satisfied by physicians that there was no contagious quality in his distemper (though I did not much fear it), I went well accompanied; and, in the presence of the company, he declared that whatever he had said concerning the plot, was true, and he, being a dying man, had nothing lay upon his conscience on that score. The greatest trouble he had, was the danger the king, whom he loved above all things, was in from the papists at this time, who would attempt his life, as soon as ever he should cease to be kind to them. After I had asked him if he had any thing to impart to me in private; he told me had, and having made the company withdraw, all but my clerk, I took the inclosed examination upon

Letter to the secretary.

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oath. You may imagine I was not curious to perplex him with questions, I took it just as he delivered it; of what signification it will be, I leave to wiser men. I think it my duty to send it to you, that you may inform his majesty of the truth. I shall wait upon you at Windsor upon Sunday next, to receive your farther commands. ——Ten at night; the copy inclosed ill taken; I shall bring the original with me."

"*The Examination of Captain William Bedloe, taken upon oath before the Lord Chief Justice North, at Bristol,* 16 *August,* 1680.

Examination itself.

"The examinant saith, that the Duke of York hath been so far engaged in the plot, as he hath seen by letters in Cardinal Barbarini's secretary's study, that no part hath been proved against any man already that hath suffered, but that to the full those letters have made him guilty of it all but what tended to the king's death.—At Rome I asked father Anderton and father Lodge, two jesuits, what would the duke do with his brother when he was king? And they answered me, they would find means for that, they would give him no trouble about it.—Then I told them, I believed the duke loved his brother so well, he would suffer no violence to be done to him; they said no; if the duke could be brought to that, as he had been religiously to every thing else,

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they might do their work, their other business was ready, and they might do it presently, but they knew they could not bring him to that point; but they would take care of that themselves; they had not begun with him to leave him in such scruples as that, but they would set him into his throne, and there he should reign blindfold three or four days, for they had settled some, they should pitch the action upon, who should clear their party, and then he should fly upon them with the sword of revenge. And this examinant doth further add, that the queen is not, to this examinant's knowledge, nor by any thing he could ever find out, any way concerned in the murder of the king; but barely by her letters consenting and promising to contribute what money she could to the introducing the catholic religion: nay, it was a great while, and it made her weep, before she could be brought to that."

Imprimatur,

10th Nov. 1680. WI. WILLIAMS."

The private intent of this expedition, as far as it concerned his lordship.

As to the true intent and design of this expedition to Bristol, I shall say nothing here, because it is fully accounted for in the Examen. But as to his lordship's private concern in particular, it is to be known that nothing was more desired by the party, than to remove him (who was an inflexible loyalist) out of their way; and, in order

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to that, to fasten some trepan upon him, or get some advantage of charging him with matter of discouraging, ridiculing, tampering, or stifling the plot; all which were sins in a high degree, and ground enough for an address to remove, &c.

Now in this expedition, Bedloe, by design, having his lordship (as he might think) to himself, by often repairing to him, frequenting his table (as his brother was so brazen-faced to do) and pretending to make known horrid facts against the queen, and the duke; at which, as was presumed, his lordship might start, and wish him to have a care, and the like. And then, if a formal deposition was taken, he might say that, in discourse, he had discovered much more, but his lordship persuaded him to suppress it, or any thing else, that, having had opportunities, he had been pleased to say or swear; and his brother and wife, and somebody else (perhaps) at hand to swear matters called circumstantial evidence. And this is not such a romance of pure invention, as may seem; for, after this bilk of a discovery was known, it was reported, and by many really expected or believed, that Bedloe's wife was coming to town, and would testify that her husband had discovered other matters, and more positive, but his lordship had suppressed them. But after she was come up, she had no discovery to make, but of her wants; and, after having got

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what she could, she vanished. And thus his lordship reaped the fruit of his good fortune, and caution; for without the former, I question whether all his stock of the latter would so clearly have brought him off.

Called to the House of Commons, and behaviour there.

His lordship was not long come to town, before he was summoned to attend the House of Commons, to give an account of what discoveries, touching the plot, had been made to him at Bristol. This gave him occasion to ruminate all the whole proceeding, to find if any slip had been made (for he all along trod upon eggs), and he could find nothing possible to be cavilled upon, but (perhaps) a slip in his letter to the secretary in these words—"You may imagine I was not curious to perplex him with questions." As if he was wilfully wanting in searching out the truth by questions; but the answer was obvious, and no notice was taken of it. His lordship was not used to afford any umbrage of ill construction against himself, but this came out on account of familiarity with the secretary, not dreaming of a public scrutiny; and, in such a case, it might have proved a great deal worse: but now, for the House of Commons, his lordship attended at the time, and, having a chair set for him by the table, after sitting a while, he stood up and related the passage shortly; and, as to the circumstances, there was his narrative of every particular. And

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then he gave in the original examination, (which, for this purpose, he had obtained from the secretary,) and he laid down the very letter he wrote to the secretary (obtained as before) in which had been inclosed the copy sent up from Bristol. And having said that this was all he knew, or could recollect concerning that matter, he was dismissed. It is to be supposed that all this gear was sufficiently canvassed, but nothing to be got out of it; so, after a considerable time, it was ordered to be printed, as before was mentioned, and he never heard more of the matter. I do not mention here the snare laid for the judges by the Earl of Sunderland, when secretary, because the same is particularly related in the Examen. And I lay aside the voyaging part, at present, and return to his lordship's conduct of himself in the execution of his commissions of assize, &c. in the Western circuit.

His cautious behaviour.

His lordship took care always to declare the laws to the country with all the exactness possible, and without making any distinctions of favour, of any party or denomination of men; and, according as the tenour of our law-books run, he exhorted to loyalty, and to support the royal prerogative by law; showing that the safety of the national religion and property depended on the people's dutiful and legal obedience to the crown: and, for this purpose, he used some short

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harangue at the entrance of his charges. When he first came the circuit, for two or three years, the factious gentlemen came to him, and, for aught that appeared at first to the contrary, for respect, as others did; but, in truth, it was to sound, and practise experiments upon him; but more especially if any factious cause was to be tried, as against a justice of peace for disturbing conventicles, a mayor of a town for some slip of authority exerted against the party, or, perhaps, where some party-men were defendants, or the like, either to sound his lordship's temper, or tempt his judgment by flatteries, or, at a distance, shows of terror, and the like; as his lordship soon found was manifestly their drift. He received them with all the civility that was decent, and discoursed with them amicably and freely upon indifferent matters; and, while they glanced at what he did not like, he gave them the hearing, and served himself of their discourse, to conjecture what was upon the anvil, and what they drove at. But, in his own talk, gave no umbrage for them to think him ductile, or to be wrought upon against his principle, or that their discourse made any impression upon him; and wonderful careful he was not to give handles against himself; such as, among that party, might be wrested to calumny, as if he favoured popery, or arbitrary power: all which they earnestly de-

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sired should be believed of him. And so amongst the gentlemen of the loyal side, who, in most of the counties, were almost the whole body, he used no other terms in his private discourse, than might have been pronounced upon the bench: for there is found in most men, either an itch, or else a vanity of talking, which disposeth them to report what their superiors say; and is, sometimes, the cause of great misconstructions and inconveniences. For which reason, men, in authority, cannot be too solemn, and attached to a true sense and principle in their ordinary conversation.

In factious causes.

And his lordship, when the factious causes came to be tried before him, and, by the muster, he observed the tendency of the matter, and, sometimes, thought it was brought forward to try him rather than the parties, managed with absolute regard to the strictest forms of law, and justice of trials, gave full hearing, and allowed of no indecency or disorder of counsel, took no notice of what some, upon the bench, would insinuate (for the gentlemen were warm, and, on one side as well as the other, apt to meddle), but, before he had done, reduced the fact to a state of clearness; and so, after all impertinences pared off, the law was seldom doubtful; and, if it were, he gave such reasons, as justified his determinations: and so he sailed among the rocks, gave full satis-

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faction to active gentlemen that the law was his rule, and the forms of it his direction. And the faction had no handle for any complaint that wrong was done, either in the matter or manner of his trials. Only some of them said that "he never bit but in the right place;" and, to say the truth, of that he seldom failed. In this manner the faction proved him, till, after two or three years experimenting, they despaired of making any impression upon, or getting any advantage against him; and so they gave him over. For the chief of them, as, for instance, Sir Francis Rolls in Hampshire (but there is no need of names) and others, forbore the assizes, and came no more there while he came that circuit. I should here account for the occasion of that famous practice of surrenders and renewals of charters, and of *quo warranto's* against some corporations; which, at first, moved from some gentlemen of Dorsetshire and Devonshire, provoked by the impudent and audacious behaviour of some corporations, and, through his lordship, came to his majesty's ear. But all this is inserted in the Examen;* where the whole will appear.

In matters popular.

As to the ordinary business of the assizes (espe-

* P. 624. The town of Pool, in Dorsetshire, is said to have been the first against which the new system of *quo warranto's* was tried. *Ibid.* and see more as to the *quo warranto's*, *infra*.

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cially on the crown side) he was never easy till, by examining over and over, and over again, asking parties questions, as attornies, and every one that he thought could help to clear up an intricate fact; and scarce gave over till he had brought it to so clear a state, as that the audience should think as he declared. He had certain marks or notes, by means of which, however people shifted and prevaricated, he concluded what the truth was; and then the work was to make it plain to every body. Of this the case of Grant, touched before, was an instance; where, by the start of a speech, he concluded it true. He had also observed that men, inclined to passion, had more of truth than those who were unconcerned. In trials of some criminals, whose cases proved very obscure, or doubtful; as to such, especially if they were capital, he was infinitely scrutinous; but never more puzzled than when a popular cry was at the heels of a business; for then he had his jury to deal with, and if he did not tread upon eggs, they would conclude sinistrously, and be apt to find against his opinion. And, for this reason, he dreaded the trying of a witch. It is seldom that a poor old wretch is brought to trial upon that account, but there is, at the heels of her, a popular rage that does little less than demand her to be put to death: and, if a judge is so clear and open as to declare against that impious vulgar

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opinion, that the devil himself has power to torment and kill innocent children, or that he is pleased to divert himself with the good people's cheese, butter, pigs, and geese, and the like errors of the ignorant and foolish rabble, the countrymen (the triers) cry, this judge hath no religion, for he doth not believe witches; and so, to show they have some, hang the poor wretches. All which tendency to mistake requires a very prudent and moderate carriage in a judge, whereby to convince, rather by detecting of the fraud, than by denying authoritatively such power to be given to old women.

Witches hanged at Exeter.

His lordship was somewhat more thoughtful upon this subject; because that, in the year in which Mr. Justice Raymond was his co-judge in that circuit, two old women were hurried out of the country to be tried at Exeter for witchcraft; and the city rang with tales of their preternatural exploits, as the current of such tattle useth to overflow. Nay, they went so far as to say that the judges' horses were at a stand, and could not draw the coach up the Castle-lane: all which the common sort firmly believed. It fell out that Raymond sat on the crown side there; which freed his lordship of the care of such trials. But he had really a concern upon him at what happened; which was, that his brother Raymond's passive behaviour should let those poor women

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die. The cases were so far clear, viz. that the old women confessed, and owned in court, that they were witches.* These were two miserable old creatures, that, one may say, as to sense or understanding, were scarce alive; but were overwhelmed with melancholy, and waking dreams, and so stupid as no one could suppose they knew either the construction or consequence of what they said. All the rest of the evidence was trifling. I, sitting in the court the next day, took up the file of informations, taken by the justices, which were laid out upon the table, and against one of the old women, read thus:—" This informant saith he saw a cat leap in at her (the old woman's) window, when it was twilight; and this informant farther saith, that he verily believeth the said cat to be the devil, and more saith not." The judge made

* See *Howell's State Trials*, vol. viii. p. 1018, which appears to be the case of the witches here alluded to. According to the report there, both the criminals confessed their dealings with the devil. Temperance Lloyd, on being asked whether she had ever seen the devil, and of what shape and colour he was, answered, " Black, like a bullock!" In her examination before the magistrates, she had given a different account, and affirmed that he appeared to her " in the shape or likeness of a black man of about the length of her arm; that his eyes were very big, and that he hopped or leaped in the way before her." The proceedings in this case exhibit a most extraordinary instance of the wildest self-delusion. For other cases of witchcraft, see *State Trials*, vol. ii. p. 1049, vol. iv. p. 817, and vol. vi. p. 647.

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no nice distinctions, as how possible it was for old women in a sort of melancholy madness, by often thinking in pain, and want of spirits, to contract an opinion of themselves that was false; and that their confession ought not to be taken against themselves, without a plain evidence that it was rational and sensible, no more than that of a lunatic, or distracted person; but he left the point upon the evidence fairly (as they call it) to the jury, and they convicted them both, as I remember; but one most certainly was hanged.

A witch acquitted at Salisbury.

The first circuit his lordship went westward, Mr. Justice Rainsford, who had gone former circuits there, went with him; and he said that, the year before, a witch was brought to Salisbury, and tried before him. Sir James Long came to his chamber, and made a heavy complaint of this witch, and said that if she escaped, his estate would not be worth any thing; for all the people would go away. It happened that the witch was acquitted, and the knight continued extremely concerned; therefore the judge, to save the poor gentleman's estate, ordered the woman to be kept in gaol, and that the town should allow her 2*s.* 6*d.* per week; for which he was very thankful. The very next assizes, he came to the judge to desire his lordship would let her come back to the town. And why? They could keep her for 1*s.* 6*d.* there; and in the gaol, she cost them a shilling more.

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An old man tried for a wizard.

His lordship had not the good fortune of escaping all business of that kind; for at Taunton-Dean he was forced to try an old man for a wizard; and, for the curiosity of observing the state of a male witch or wizard, I attended in the court, and sat near where the poor man stood. The evidence against him was, the having bewitched a girl of about thirteen years old: for she had strange and unaccountable fits, and used tó cry out upon him, and spit out of her mouth straight pins; and, whenever the man was brought near her, she fell in her fits, and spit forth straight pins. His lordship wondered at the straight pins, which could not be so well couched in the mouth as crooked ones; for such only used to be spit out by the people bewitched. He examined the witnesses very tenderly and carefully, and so as none could collect what his opinion was; for he was fearful of the jurymen's precipitancy, if he gave them any offence. When the poor man was told he must answer for himself, he entered upon a defence as orderly and well expressed as I ever heard spoke by any man, counsel, or other; and if the attorney-general had been his advocate, I am sure he would not have done it more sensibly. The sum of it was malice, threatening, and circumstances of imposture in the girl; to which matters he called his witnesses, and they were heard. After this was done, the judge was not satisfied to

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direct the jury before the imposture was fully declared, but studied; and beat the bush awhile, asking sometimes one and then another, questions as he thought proper. At length he turned to the justice of peace that committed the man, and took the first examinations, and "Sir," said he, "pray will you ingenuously declare your thoughts, if you have any, touching these straight pins which the girl spit; for you saw her in her fit?" Then, "my lord," said he, "I did not know that I might concern myself in this evidence, having taken the examination, and committed the man. But, since your lordship demands it, I must needs say I think the girl doubling herself in her fit, as being convulsed, bent her head down close to her stomacher, and, with her mouth, took pins out of the edge of that, and then, righting herself a little, spit them into some by-standers hands." This cast an universal satisfaction upon the minds of the whole audience, and the man was acquitted. As the judge went down stairs, out of the court, a hideous old woman cried, "God bless your lordship." "What's the matter, good woman?" said the judge. "My lord," said she, "forty years ago, they would have hanged me for a witch, and they could not; and, now, they would have hanged my poor son."

The princely œconomy of the Duke of Beaufort.

One year his lordship, concluding at Bristol, made a visit at Badminton to the duke of Beaufort, and staid about a week. For the duke was

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descended from a North of his lordship's family, viz. one of the Lord Edward North's daughters, whom a lineal ancestor of his grace married. So besides conformity of principle, with respect to the public, they were, by this relation, qualified for mutual respect and honour. I mention this entertainment as a handle of showing a princely way of living, which that noble duke used, above any other, except crowned heads, that I have had notice of in Europe; and, in some respects, greater than most of them, to whom he might have been an example. He had above 2000*l.* per annum in his hands, which he managed by stewards, bailiffs, and servants; and, of that, a great part of the country, which was his own, lying round about him, was part, and the husbandmen, &c. were of his family, and provided for in his large expanded house. He bred all his horses, which came to the husbandry first colts, and, from thence, as they were fit, were taken into his equipage: and, as by age, or accident, they grew unfit for that service, they were returned to the place from whence they came, and there expired; except what, for plenty, or unfitness, were sold or disposed of. He had about two hundred persons in his family, all provided for; and in his capital house, nine original tables covered every day: and, for the accommodation of so many, a large hall was built, with a sort of alcove, at one

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end, for distinction; but yet the whole lay in the view of him that was chief, who had power to do what was proper for keeping order amongst them; and it was his charge to see it done. The tables were properly assigned; as, for example, the chief steward with the gentlemen and pages; the master of the horse with the coachmen and liveries; an under steward with the bailiffs and some husbandmen; the clerk of the kitchen with the bakers, brewers, &c. all together; and other more inferior people, under these, in places apart. The women had their dining-room also, and were distributed in like manner. My lady's chief woman with the gentlewomen; the house-keeper with the maids, and some others. The method of governing this great family was admirable and easy, and such as might have been a pattern for any management whatever. For if the duke or duchess (who concerned herself much more than he did; for every day of her life, in the morning, she took her tour, and visited every office about the house, and so was her own superintendent) observed any thing amiss or suspicious, as a servant riding out, or the like, nothing was said to that servant; but his immediate superior, or one of a higher order, was sent for, who was to inquire and answer if leave had been given or not; if not, such servant was straight turned away. No fault of order was passed by; for it

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may be concluded there are enough of them that pass undiscovered. All the provisions of the family came from foreign parts, as merchandise. Soap and candle were made in the house; so likewise the malt was ground there; and all the drink, that came to the duke's table, was of malt sun-dried upon the leads of his house. Those are large, and the lanthorn is in the centre of an asterisk of glades, cut through the wood of all the country round, four or five in a quarter, almost *apert de vieu*. Divers of the gentlemen cut their trees and hedges to humour his vistos; and some planted their hills in his lines, for compliment, at their own charge. All the trees, planted in his parks, and about, were fenced with a dry wall of stone, taken out where the tree was set. And with all this menagery and provision, no one, that comes and goes for visits, or affairs with the duke (who was Lord Lieutenant of four or five counties, and Lord President of Wales) that could observe any thing more to do there, than in any other nobleman's house. So little of vain ostentation was to be seen there. At the entrance, where coaches ordinarily came in, the duke built a neat dwelling-house, but pompous stables, which would accommodate forty horses, as well as the best stables he had. This was called the inn, and was contrived for the ease of the suitors, as I may call them; for, in-

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stead of half a crown to his servants at taking horse, sixpence there, for form, served the turn; and no servant of his came near a gentleman's horse; but they were brought by their own servants, except such as lodged, whose equipages were in his own stables.

As for the duke and duchess, and their friends, there was no time of the day without diversion. Breakfast in her gallery that opened into the gardens; then, perhaps a deer was to be killed, or the gardens, and parks with the several sorts of deer, to be visited; and if it required mounting, horses of the duke's were brought for all the company. And so, in the afternoon, when the ladies were disposed to air, and the gentlemen with them, coaches and six came to hold them all. At half an hour after eleven the bell rang to prayers, so at six in the evening; and, through a gallery, the best company went into an aisle in the church (so near was it), and the duke and duchess could see if all the family were there. The ordinary pastime of the ladies was in a gallery on the other side, where she had divers gentlewomen commonly at work upon embroidery and fringe-making; for all the beds of state were made and finished in the house. The meats were very neat, and not gross; no servants in livery attended, but those called gentlemen only; and, in the several kinds, even down to the small beer, nothing could

More of the same.

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be more choice than the table was. It was an oblong, and not an oval; and the duchess, with two daughters only, sat at the upper end. If the gentlemen chose a glass of wine, the civil offers were made either to go down into the vaults, which were very large and sumptuous, or servants, at a sign given, attended with salvers, &c. and many a brisk round went about; but no sitting at a table with tobacco and healths, as the too common use is. And this way of entertaining continued a week, while we were there, with incomparable variety: for the duke had always some new project of building, walling, or planting, which he would show, and ask his friends their advice about; and nothing was forced, or strained, but easy and familiar, as if it was, and really so I thought it to be, the common course and way of living in that family.

Structure and education.

One thing more I must needs relate, which the duke told us smiling; and it was this. When he was in the midst of his building, his neighbour, the Lord Chief Justice Hales, made him a visit; and observing the many contrivances the duke had for the disposing of so great a family, he craved leave to suggest one to him, which he thought would be much for his service; and it was, "to have but one door to his house, and the window of his study, where he sat most, open upon that." This shows how hard it is for even wise

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and learned men to consider things without themselves. The children of the family were bred with a philosophical care. No inferior servants were permitted to entertain them, lest some mean sentiments, or foolish notions and fables, should steal into them; and nothing was so strongly impressed upon them, as a sense of honour. Witness the Lord Arthur, who, being about five years old, was very angry with the judge for hanging men. The judge told him that, if they were not hanged, they would kill and steal. "No," said the little boy, "you should make them promise upon their honour, they will not do so, and then they will not." It were well if this institutionary care of parents were always correspondent in the manners of all the children; for it is not often found to prove so.

Entertainment in the North.

But now to return to his lordship, and his circuiteering. He took an opportunity, one summer, to turn by the North, which begins at York, and concludes at Lancaster; but, in winter, it is usual to omit the counties of Durham, Northumberland, Cumberland, and Westmoreland. His lordship was curious to visit the coal mines in Lumly Park, which are the greatest in the North, and produce the best coal, and, being exported at Sunderland, are distinguished as of that place. These collieries had but one drain of water drawn by two engines, one of three stories, the other of

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two. All the pits, for two or three miles together, were drained into those drains. The engines are placed in the lowest places, that there may be the less way for the water to rise; and if there be a running stream to work the engines, it is happy. Coal lies under the stone; and they are twelve months in sinking a pit. Damps, or foul air, kill insensibly; sinking another pit, that the air may not stagnate, is an infallible remedy. They are most in very hot weather. An infallible trial is by a dog; and the candles show it. They seem to be heavy sulphurous air not fit for breath; and I have heard some say that they would sometimes lie in the midst of a shaft, and the bottom be clear. The flame of a candle will not kindle them so soon as the snuff; but they have been kindled by the striking fire with a tool. The blast is mighty violent; but men have been saved by lying flat on their bellies. When they are by the side of a hill, they drain by a level carried a mile under ground, and cut through rock to the value of 5 or 6000*l.*, and where there is no rock it is supported with timber.

Belvoir castle, York, and Durham.

In the way towards the North his lordship visited the Lord Rutland at Belvoir castle, where the prospect is much as that is from Windsor; but hath this advantage, that the subjacent country is most of it chase ground; and that is so detrimental that the people offered 1500*l.* per annum,

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rent charge of inheritance, to be released; but that is kept against an exigence in the family (if any should happen), and so to preserve a better estate. There was little of curiosity to be observed in the city of York, besides the metropolitan church, which is a stately one indeed, only disgraced by a wooden roof framed archwise, but manifestly seen. The gentry affect much to walk there to see and be seen; and the like custom is used at Durham. In these churches, wind music was used in the choir; which I apprehend might be introduced at first for want of voices, if not of organs; but, as I hear, they are now disused. To say the truth, nothing comes so near, or rather imitates so much, an excellent voice, as a cornet pipe; but the labour of the lips is too great, and it is seldom well sounded. His lordship was well enough known in all the choirs wherever he came; and the boys failed not to bring him a fair book of the anthem and service, and sometimes the score if they had it, expecting, as they always had, a compensation for their pains. At Durham, the bishop entertained, who is a sort of sovereign, or count palatine, there, but much shrunk below the ancient authority and dignity. All process of law is original, without dependence on London. The cathedral church shows the most of gothic antiquity of any in England; and the marks of old ruin are to be

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seen by the different orders of the supports: those, which are very large and round, with semi-circular arches, are the most antique. The bishop carried his lordship to his ancient seat called Auckland, which is to Durham as Croydon to Lambeth; and the entertainment was in all points, while his lordship stayed in that palatinate, as I may term it, truly great and generous. And thence the road lay to Newcastle over a very delightful plain, having Lumly castle in view, on the left hand, most part of the way.

Entertainment at Newcastle.

His lordship's entertainment at Newcastle was very agreeable, because it went most upon the trades of the place, as coal-mines, salt-works, and the like, with the wonders that belonged to them; and the magistrates were solicitous to give him all the diversion they could: and one was the going down to Tinmouth castle in the town barge. The equipment of the vessel was very stately; for, a-head, there sat a four or five drone bagpipe, the North-country organ, and a trumpeter astern; and so we rowed merrily along. The making salt I thought the best sight we had there. The other entertainment was a supper in the open air upon an island in the Tyne, somewhat above the town; and all by the way of ligg and sit upon the ground; but provisions for a camp, and wine, of all sorts, very fine. In short, all circumstances taken together, the cool of the

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evening, the verdant flat of the island with wood dispersed upon it, and water curling about us, view of the hills on both sides of the river, the good appetites, best provisions, and a world of merry stories of the Scots (which by the way makes a great part of the wit in those parts), made the place very agreeable, where every one walked after his fancy, and all were pleased.

Of a drain to a coal-mine, and way-leaves.

Some of the aldermen related strange histories of their coal-works: and one was by Sir William Blacket who cut into a hill in order to drain the water, and conquered all difficulties of stone, and the like, till he came to clay, and that was too hard for him; for no means of timber, or walls, would resist, but all was crowded together; and this was by the weight of the hill bearing upon a clay that yielded. In this work he lost 20,000*l.* Another thing, that is remarkable, is their way-leaves; for, when men have pieces of ground between the colliery and the river, they sell leave to lead coals over their ground; and so dear that the owner of a rood of ground will expect 20*l.* per annum for this leave. The manner of the carriage is by laying rails of timber, from the colliery, down to the river, exactly straight and parallel; and bulky carts are made with four rowlets fitting these rails; whereby the carriage is so easy that one horse will draw down four or five chaldron of coals, and is an immense benefit to the coal mer-

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chants. Another advantage of the coasters upon the river, was showed his lordship: and that was what they call ballast wharfs. Any land owner may make that which they call a quay, next to the river, and sell leave to ships to throw out their ballast there, which the town will not permit to be tossed into the river; and the loading of coals is ballast enough to return with home towards London. So it seems that the shifting of the ballast, out and home, is no small incumbrance to the coal-trade.

The small port of Seaton Delaval.

From Tinmouth his lordship, by invitation, went to dine at Seaton Delaval. Sir Ralph Delaval entertained us exceeding well; and not so much with eating and drinking, which appertains properly to the brute, and not to the man, but with very ingenious discourse, and showing to us many curiosities, of which he himself was author, in that place. The chief remarkable, there, was a little port, which that gentleman, with great contrivance, and after many disappointments, made for securing small craft that carried out his salt and coal; and he had been encouraged in it by King Charles the Second, who made him collector and surveyor of his own port, and no officer to intermeddle there. It stands at the mouth of a rill (as it is called) of water, which, running from the hills, had excavated a great hollow, in the fall, as it ran. The ground, at the sea, is a hard

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impenetrable flat rock; and, for cover of the vessels, which else, in the rage, must be dashed to pieces, Sir Ralph had built, or, rather, often rebuilt a pier of stone, that fended off the surge to the north-east, and, at high water, gave entrance near a little promontory of the shore, turning in by the north; and, at low water, the vessels lay dry upon the rock. This had been built of square stone, with, and without, cement; but all was heaved away with the surge; and, for a great while, nothing could be found strong enough to hold against the lifting and sucking of the water. At length, Sir Ralph, at an immense cost, bound every joint of the stone, not only laterally, but upright, with dovetails of heart of oak let into the stone; and that held effectually: for, if the stones were lifted up, they fell in their places again. This little harbour was apt to silt up with the sea sand; for remedying of which, he used the back water of his rill, and that kept the channel always open: and, for that end, he had an easy and sure device; which was sluice-gates built cross the channel of the rill, which, during tide of flood, were shut, and so the water gathered to a great head above, till low water; and then the sluices opened, let the gathered water come down all at once, which scoured away the sand that, every tide, lodged upon the rock, and washed it as clean as a marble table. All this we saw, with his salt-pans at work

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about it, and the petit magazines, of a marine trade, upon the wharf: and so he reaped the fruits of his great cost and invention; and if, in the whole, the profit did not answer the account, the pleasure of designing and executing, which is the most exquisite of any, did it.

A colliery drowned.

I must not omit one passage, which showed the steady constancy of that gentleman's mind; which was, that, at the beginning of dinner, a servant brought him a letter, wherein was an account of a bag of water which was broke in his greatest colliery. Upon which, folding up the letter, said he, "My lord, here I have advice sent me of a loss, in a colliery, which I cannot estimate at less than 7000*l.*; and now you shall see if I alter my countenance or behaviour, from what you have seen of me already." And so fell to discoursing of these bags of water, and the methods to clear them, as if the case had been another's, and not his own. He said, his only apprehension was that the water might come from the sea; and "then," said he, "the whole colliery is utterly lost: else, with charge, it will be recovered." Whereupon he sent for a bottle of the water, and, finding it not saline, as from the sea, was well satisfied. Afterwards we inquired if the water was conquered, and we were told it proved not so bad as he expected. For it seems that although 1700*l.* was spent upon engines, and they could not sink it an inch, yet

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600*l.* more emptied it; so that it had no more than the ordinary springs; and, in about six weeks, he raised coal again. He said that chain pumps were the best engines, for they draw constant and even; but they can have but two stories of them, the second being with an axle-tree of seven or eight fathom; and the deepest story is wrought by buckets, and a wheel and ropes, with the force at the top.

The Border commission.

The county of Northumberland hath been exceedingly infested with thieving of cattle, which is the remains of the Border trade, since the union with Scotland, after the way used, in time of peace, before. For as, in Italy, the murderer, running into the next territory, was safe: so here they stole on either side, and the other, under a different jurisdiction, was an asylum. This was so great a mischief that all the considerable farm-houses (the houses of gentlemen were castles of course) were built of stone in the manner of a square tower, with an overhanging battlement, and, underneath, the cattle were lodged every night. In the upper room the family lodged, and, when the alarm came, they went up to the top, and, with hot water and stones from the battlement, fought in defence of their cattle. The advantage of the union was so great to these countries, that the Lord Grey of Wark's estate, which, before, was not above 1000*l.* per annum,

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hath since risen to 7 or 8000*l.*, which is, at least, a sixfold improvement. After the union, to prevent this thieving trade, the crown sent commissioners of oyer and terminer, directed to an equal number of English and Scotch, extending to certain limits on each side of the Border; and, being continued, it is therefore called the Border commission. And these meet in their sessions, and hang up at another rate than the assizes; for we were told that, at one sessions, they hanged eighteen for not reading *sicut clerici*.

Of the country keeping, and Bedlamers.

This hath made a considerable reform; but yet there is need of an officer they call a country keeper, who hath a salary from the country, and is bound to make good all the stolen cattle, unless found out and restored. When his lordship was there, one Mr. Widdrington was keeper, with 500*l.* per annum salary. The country is yet very sharp upon thieves; and a violent suspicion, there, is next to conviction. When his lordship held the assizes at Newcastle, there was one Mungo Noble (supposed to be a great thief) brought to trial before his lordship, upon four several indictments; and his lordship was so much a South country judge, as not to think any of them well proved. One was for stealing a horse of a person unknown: and the evidence amounted to no more than that a horse was seen feeding upon the heath near his shiel (which is a cottage made in

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open places of turf and flag), and none could tell who was the owner of it. In short, the man escaped, much to the regret of divers gentlemen, who thought he deserved to be hanged; and that was enough. While the judge, at the trial, discoursed of the evidence and its defects, a Scotch gentleman upon the bench, who was a Border commissioner, made a long neck towards the judge, and "My laird," said he, "send him to Huzz, and yees neer see him mere." This country was then much troubled with Bedlamers. One was tried before his lordship, for killing another of his own trade, whom he surprised asleep, and, with his great staff, knocked on the head; and then bragged that he had given him "a sark full of sere benes;" that is, a shirt full of sore bones. He would not plead to the country, because there were horsecopers amongst them, till the press* was ready; and then he pleaded, and was, at last, hanged. They were a great nuisance in the country, frighting the people in their houses, and taking what they listed: so that a small matter, with the countrymen, would do such a fellow's business.

Officiousness of the Borderers.

From Newcastle, his lordship's route lay to Carlisle. The Northumberland sheriff gave us all arms; that is, a dagger, knife, pen-knife, and

* The punishment of the *peine forte et dure*, abolished by the statute of 12 Geo. III. c. 20.

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fork, all together. And because the hideous road along by the Tyne, for the many and sharp turnings, and perpetual precipices, was for a coach, not sustained by main force, impassable, his lordship was forced to take horse, and to ride most part of the way to Hexham. We were showed where coal-mines burnt under ground; but could discern nothing of it, besides the deadness of all plants there. We were showed the Picts' wall; but it appeared only as a range, or bank of stones all overgrown with grass, not unlike the bank of the Devil's ditch at Newmarket, only without any hollow, and nothing near so big. Here his lordship saw the true image of a Border country. The tenants of the several manors are bound to guard the judges through their precinct; and out of it they would not go, no, not an inch, to save the souls of them. They were a comical sort of people, riding upon negs, as they call their small horses, with long beards, cloaks, and long broadswords, with basket hilts, hanging in broad belts, that their legs and swords almost touched the ground; and every one, in his turn, with his short cloak, and other equipage, came up cheek by jowl, and talked with my lord judge. His lordship was very well pleased with their discourse; for they were great antiquarians in their own bounds.

Of Hexham and Carlisle; and

We came, at length, to Hexham, formerly a metropolis of a famous shire of that name. From

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the entertainment and lodging there, it might be mistaken; but whether for a Scotch, or for a Welsh town, may be a nice point for the experienced to determine. The rest of the country to Carlisle was more pleasant and direct; and, bating hunger and thirst, which will not be quenched by any thing to be fastened upon there, but what the bounty of the skies affords, was passed over with content. At Carlisle, nothing extraordinary occurred, but good ale and small beer, which was supplied to their lordships from the prebends' houses; and they boasted of brewing it at home: but, being asked with what malt? they made answer, that it was South country malt. For, to say truth, the big (viz. a four-rowed barley) is seldom ripe; and the oats, which they call yeats, are commonly first covered with snow. In Cumberland, the people had joined in a sort of confederacy to undermine the estates of the gentry, by pretending a tenant right; which, there, is a customary estate, not unlike our copyholds: and the verdict was sure for the tenants' right, whatever the case was. The gentlemen, finding that all was going, resolved to put a stop to it by serving on common juries. I could not but wonder to see pantaloons and shoulder-knots crowding among the common clowns; but this account was a satisfaction.

tenants right in Cumberland.

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Westmoreland, Appleby, Countess of Pembroke.

From hence we went, through a plain but stony road, in the view of hideous mountains called Foulness hills, to Appleby in Westmoreland. There is little of a shire town to be found there, being but, as it were, a village; only there is the castle, an ancient fortified seat of the Earl of Thanet's. Not long before the judge came there, the Countess of Pembroke made it her ordinary habitation: but she was then dead. She was a magnificent and learned lady, and had named divers of the towers of her castle; one was Pendragon's tower, another Julius Cæsar's tower. The Earl of Thanet is the hereditary sheriff of that county; the only one, of that quality, in England, and had ordered a sumptuous entertainment to be given by one Mr. Gambetes, his steward, to the judges. His lordship was very much pleased with the inscriptions the countess had made in divers places about the castle, and under old pictures, containing much of history, and pedigree of the family. And it was said that Hales, afterwards chief justice, assisted her in the perusal and methodising of her evidences and muniments, and made her fair extracts of them. I must mention one thing more, for the honour of this incomparable lady; and that was her generosity. It was affirmed, by those that knew it to be true, that no person ever made her a visit, that went away without a present ingeniously con-

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trived, according to the quality of the person. And we were sorry we could not bew itnesses of that piece of grandeur.

A great feud in Cumberland reconciled.

There was a high feud, that had been carried on in this country with a world of heat, between the Musgraves and their friends on the one side, and the Lowthers, Fletchers, and divers other gentlemen on the other. And if one may borrow a distinction of much later date, I may say the former were Tory, and the other Whig. It is certain that the Musgraves were envied by their neighbours; for they were courtiers, and having been cavaliers, and also very serviceable in parliament (it seems that some so early knew how to value their services there), were favoured, having the government of Carlisle, a sort of frontier, and also were farmers at easy rates, of a duty upon cattle out of Scotland; which duty, some said, as they had ordered the matter, was gained from the parliament on purpose to be granted to them whose project it was. The difference formed itself upon the division of the country (if I may borrow the words) into Cisalpine and Transalpine regions; and the question was in which, of these, the general sessions should be held; each side holding stiffly to his own convenience: and, sometimes, they had the general quarter sessions at both places, which was very absurd. And this dispute had its purlieus fraught with general and

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original slanders, raised on either side against the other; which ran so high that the whole country ran into the faction: good people were scandalised, and the king himself importuned and troubled about it. And his majesty was pleased to recommend the matter to his lordship to compose in his circuit, if he could. At his arrival at Appleby, he appointed the gentlemen to attend him; which they did. The Musgraves spoke for themselves; the other side had a counsel, but left little to him; but Sir John Lowther, since Lord Lonsdale,* managed most on that side. His lordship gave neither a victory over the other (which, in the North, is much desired), but proposed an expedient, which was then new, though, of later years, much in use in divers counties. And it is expressed in a memorandum his lordship took in an almanack, viz. "There being a con-"troversy concerning holding the quarter ses-"sions at two places in Westmoreland, Mr. "Baron Berty and myself, upon conference with "all the justices, delivered our opinions that "there could be but one general quarter ses-"sions, in one county, for one quarter; and that, "if conveniency required attendance at other "places, it must be by way of adjournment: and

* Some account of this very sensible man and good patriot is prefixed to his curious *Memoir of the reign of James II.*, printed by the direction of the present Lord Lonsdale.

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" we proposed that way; to which they readily " agreed. And we advised that, at the close of " every sessions, order should go for summoning " the next, which should be done by writ under " the seal of the court; and we directed the form " of a precept, 1676." And thus this mighty difference was composed, and all the business of the sessions hath proceeded accordingly ever since.

Morton Pike, Lancaster, Kendal, trade, county palatine castle.

His lordship had a singular pleasure in viewing, from Appleby castle, the vast mountains that surround it; and particularly one called Morton Pike, which rose in the low country, in the shape of a heap of corn rounded up, and seemed as green and smooth as a bowling-green: one would be almost ready to leap from the castle upon it; so near it seemed, but was, in truth, half a day's journey off. His lordship's next remove was to Lancaster; but he lodged at Kendal by the way. That is a scattered town in an inclosed country, very stony and dirty; and we could not, without a chagrin, observe the common people walk barefoot, and the children leaping as if they had hoofs, and those shod with iron; but it is almost the same all over the North. This town, so situated, and out of the way, is yet celebrated for much woollen manufacture sent from thence to most parts of England. They could write to most trading towns, and have answers by the packs (for all is horse carriage), with returns (time

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being allowed) as certain as by the post. From hence to Lancaster is a very rugged journey, and, upon the tops of some hills, one would not give a groat for all the land he could see; it being nothing but hard and impenetrable rock, white as snow; but, in the valleys, there was fertility enough. Nothing happened to his lordship at Lancaster, worth noting. This county (as that of Durham) is palatine, but more august and regular; and all the proceedings, commencing and ending there, afforded more law business than other counties, that deal only by *nisi prius;* which made his stay longer. The chief curiosity of the place is the magnificent old castle, where the great John of Gaunt kept his court; and now in the great hall the assize courts are placed. There is enough left to show that, in such old times, their structures, and their minds also, were as great and magnific, as most ages since have had reason to boast of.

Candle coal, burning well, magnet.

In the return homewards from Lancaster, his lordship took all the advantage he could of seeing great towns and places of note. He stayed some days with Sir Roger Bradshaw, whose lordship is famous for yielding the Canal (or Candle) coal. It is so termed, as I guess, because the manufacturers in that country use no candle, but work by the light of their coal fire. The property of it is to burn and flame till it is all consumed, without

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leaving any cinder. It is lighted by a candle like amber, and the grate stands not against the back of a large chimney, as common coal grates; but in the middle, where ballads are pasted round, and the folk sit about it, working or merry-making. His lordship saw the pits, where vast piles of that coal were raised; and it is pity the place wants water carriage; else, London would be, in the better part, served with it. But the greatest wonder his lordship saw, was that which they call the burning well. The manner of it is this. First, in some place, where they know the sulphurous vapour perspires (often in a ditch) they dig up a turf, and clap it down in its place again; and then they are ready for projection. When the show-company are come, a man takes up the turf, and, after a little puffing of a brown paper match, gives fire, and instantly the hole is filled with a blue spirituous flame like brandy. It seemed to waste, and I believe would not have burnt in that manner long; but, while it was burning, they put water in the hole, and the flame continued upon the water as if it had been spirits. And some people said they used to boil eggs there. That which seemed most strange, was, that the vapour should come through the water, and burn, and no bubbling of the water appear. It seems to infer that the vapour permeates the body of the water, as water through

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sands. But I question, if the body were not fluid, but rigid, as glass, whether the vapour would so easily pass it: for the perpetual action of the fluid parts facilitates the passage. And it is some demonstration how easily the effluvia of a magnet may permeate glass, metals, and every palpable substance we are acquainted with, as we continually observe of them.

Lichfield cathedral, how rebuilt, of the service there.

His lordship pitched next at the city of Lichfield; and, as his use was, took the advantage of spending his Sunday there. I touched before how much affected his lordship was with the solemn church service in the cathedrals: which is not to be wondered at, considering how he was, in general, devoted to music; and he could not be insensible, where so good use was made of it. For the service was performed in that church, with more harmony, and less huddle, than I have known it in any church in England, except, of late, in St. Paul's. This cathedral church was beaten to pieces in the late wars; but, by the zeal and diligence of Bishop Hacket, was rebuilt as entirely as if it had never been injured; and chiefly with the money he raised by barefaced begging. No gentleman lodged, or scarce baited in the city, to whom he did not pay his respects by way of visit, which ended in plausible entreaties for some assistance towards rescuing his distressed church from ruin. And that he brought about so effectually,

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and adorned his choir so completely and politely, as I have not seen a more laudable and well-composed structure for the purpose, in the country, any where. He did not live to finish the palace; nor did his successor Woods, though rich, willingly do any thing to it. Sir Simon Degg, a gentleman of that country, to incite him to undertake it, dedicated to him a book entitled "The Parson's Counsellor;" and there, in the preface, compliments him upon the subject of having most nobly restored to the church, that demolished fabrick, for the good of his successors; although, at that time, he had not so much as turned over one single stone towards it. But I think the good Archbishop Sancroft, by his authority, forced him, at last, to do something, though full against his will.* So vast is the difference in the moral characters of men under the same call and obligation.

It was in this circuit that, as his lordship passed

* He was suspended by Sancroft from his episcopal dignity. The means by which Wood obtained his see were equally disgraceful to him and to the court. Having procured the marriage of his niece, a wealthy heiress, with the Duke of Southampton, the son of the Duchess of Cleveland, he was rewarded with the bishopric of Coventry and Lichfield. His refusal to reside upon his diocese, and his gross neglect of all his duties, and, amongst others, the repair of the episcopal palace, for which he had received money from the heirs of his predecessor, ultimately led to his suspension. (See *D'Oyley's Life of Archbishop Sancroft*, vol. i. p. 194.)

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Fanatic news letters.

along, divers gentlemen showed him circular news letters that came to them; and he perceived that the scope of these was to misrepresent and misconstrue all the public transactions of state, and might have been properly styled fanatic news letters, contrived and dispatched to divers places to stir up sedition. And, upon his lordship's enquiry, he was told that they came from Mr. Coleman, then the Duke of York's secretary.* His lordship, at his return, made a representation to the king of this news letter from such a person, and the ill consequences of it. Whereupon Mr. Coleman was turned out of the duke's service; but never much blamed; for he was afterwards made the Duchess of York's secretary. Which shows two things; 1. That notwithstanding all the fanatic noise, at that time, against popery, the papists and fanatics joined in proceedings to weaken and destroy the established government. 2. That what Coleman did, was by direction, founded upon the policy of the Roman Catholic party, at that time.

Middleton tower, Norfolk.

His lordship went but once as judge in his own country, that is, the Norfolk circuit. But there, besides the universal honour and respect he had in those parts, where had been the scene of his

* See some account of him by Burnet. (*Own Time*, vol. ii. 629.) He was one of the first sufferers in the Popish plot. See his trial (*Howell's State Trials*, vol. vii. p. 1.)

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first and rising practice, I know little to note more than what, in such cases, is obvious to every one's imagination. There is a piece of antiquity in Middleton, near Lynn, which, though it stands in sight of that great town, is not taken notice of by any of the topographers. It is called Middleton tower; but it is only a great gatehouse, somewhat like that old one (if it be standing) at Hampton Court. There are two large turrets, and a broad flat between, through which, the entrance is through a lofty arch; the first floor was a vault, and a very large room above. There appear the footsteps of a very large palace, being a square court built round to it, all within a moat. It formerly belonged to the Lord Scales, and stands now in a valley so low, that the ground about it is little better than moor. By which we see the alterations of places, that time hath made; for without doubt, anciently, the valley was good land, and watered only with a little rivulet that runs in the middle of it, and not so silted up as it is now; and, for unwholesomeness, become almost uninhabitable.

Oxford parliament.

But now, to step a little back, his lordship, coming out of his Western circuits, had two adventures. The one was meeting the king and parliament at Oxford. His time would not let him arrive at the opening of it, but two or three days after; so that the place was to him as a

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theatre; and he might have asked, what play was to be acted? He knew no more of the intrigues on foot than any stranger did, much less dreamt of a positive armament against the king, as manifestly showed itself there; which disposed the king to take advantage of the difference between the two houses, upon the matter of Fitzharris; and, after five days sitting, to dissolve them.* This sudden and resolute act the party did not expect; and, instead of being aggressors, as they intended to be, they were passive, and, as unhappy defendants, shamefully scattered and confounded. For they thought themselves so considerable, and the king so desirous of his quiet, that he would not (durst not, as some said) have dissolved them. His lordship was conveniently situated in Trinity college, his lady being one of the coheirs of the founder of it. He kept a table there, and his family were allowed to battle in the butteries. He was very much at ease about company; for none came near him but real friends and acquaintance: for all the factious people looked malicious and sour, and herded together. The days passed easily; for, as I said, we were in a theatre; no stirring without meeting acquaintance and news.

College's trial.

His next adventure was this. When he was in his Western circuit, he and his brother Jones,

* An amusing account of the circumstances attending this dissolution, is given in the Examen, p. 104.

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the other judge, were, with the judges of the midland circuit, put into a commission of oyer and terminer extraordinary, for the trying of Stephen College: an account of which, with a threatening letter delivered into his lordship's hands, is already set forth in the Examen;* so we shall pass that by, and shall only speak a little of his lordship's conduct therein. His lordship had not been long in Oxford, before word was brought to him that some stranger had put a roll of papers into his (College's) hands. Those were ordered to be brought and inspected; and thereupon it appeared that some concerned his defence, and the testimony he was to produce at his trial. These were all delivered back to him. Others were found to be downright libels, most artfully and maliciously penned, to reflect upon the government, and tending to sedition, in the form of speeches, to be pricked in at the trial, as the cues were given. As, for instance, when Mr. Attorney hath opened the evidence, say thus—, and the like at other pauses. These were detained;† for it

* P. 588.

† The detention of College's papers was certainly a most arbitrary and unjustifiable proceeding, and deservedly brought great discredit upon the Chief Justice. "North's behaviour in that whole matter," says Burnet, "was such, that probably if he had lived to see an impeaching parliament, he might have felt the ill effects of it." (*Own Time*, vol. ii. p. 876.) Roger Coke also speaks of the transaction in very indignant

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had been a prime jest if, under the pretence of a defence, the criminal should be allowed to vent seditious libels, full of mutiny and reflection, to amuse the people; and so to come forth and be published in print: when, as the law then stood, they were not allowed counsel to plead, but upon question of law showed, and to be assigned, who should behave themselves modestly. Criminals, of that sort, should not have any assistance in matters of fact, but defend upon plain truth, which they know best, without any dilatories, arts, or evasions. But this was the chief, if not the only pretence of clamour against the conduct of that trial, which was with all the indulgence in form and matter that could be demanded.

Aaron Smith's impudence.

That the defence was intended to be tumultuous, was apparent from many circumstances. I shall instance in one; which was the behaviour of one Aaron Smith, the solicitor for the prisoner.*

terms, observing, that Sir Francis North was "a man cut out to all intents and purposes for such a work." (*Detection*, vol. ii. p. 368.) It appears from Oldmixon, that Roger North was one of the counsel against College. (*See Howell's State Trials*, vol. viii. p. 550.) The papers withheld from College, were actually minutes prepared for his defence, by his legal advisers, Mr. Aaron Smith, and Mr. West. (*Examen*, p. 589.)

* In the Examen (p. 195) he is called "one Mr. Smith, a Barrister at Law, famed for standing practice in cases of forgery, &c. and Oates's learned counsel."

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His business formerly lay in the Chancery: but he took into the treason trade. He was afterwards, in the Rye plot, sent, from the council of six, to negotiate with the Earl of Argyle in Scotland, for a rising there. He was a violent monster; and his friends, for his excuse, used to say he was half mad: but that would not have saved his neck, if he had been caught. He took occasion to apply to the court for somewhat concerning these papers; and being answered, he stretched him over the bar, and "Have we not reason," said he, "when our lives and estates are beset here?" The Lord Chief Justice rose up, and, without any emotion, said to the clerk, "Record these words;" and sat down again. The consequence of that had been a judgement of misdemeanor, as effectual as after a common process and trial. Aaron instantly perceived what was to follow, and fell to explaining, excusing, and varying the words, which he said were not intended of the court. But the judges would not be severe upon him at present, out of tenderness to the prisoner, and not to give occasion for any to say they were prepared to fall hard upon him. But the court took security of him not to depart without leave of the court; and so he escaped, for nothing was done farther in that matter. As to the trial in general, it is in print, and will

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speak for itself. But this passage of Aaron Smith is not so fully represented there, as I know the truth was.

The circuits useful.

I shall conclude this part of my work, concerning his lordship's going the circuits as judge, with this note, viz. that considering to what station he came to be advanced in trust and favour at court, which made him very obnoxious to the ill effects of envy, and malice of faction; nothing could have been more propitious to him, than his visiting most parts of England in this manner, whereby he had the opportunity to show to all the gentry, where he came, his humanity, as well as justice, and learning in the law. And also to make, as he did, many engaging friendships with the better sort. Whereby it became impossible, for the mouth of slander itself, to blacken him in the opinion of the English nobility and gentry; as if he had been what the fanatics laboured to have believed of him, an arbitrary, unjust judge, a slave to the court, and a papist in masquerade.

His lordship's principles and conversation.

His lordship was ever a professor of loyalty; that is, for the legal interest and prerogative of the crown, and the protestant religion as by law established: all which is comprised under the word loyalty, which, in that time, was much in use. And as for the noisy runners about with that word in their mouths, but nothing moderate, or just, in their actions, his lordship tolerated, and

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did not discourage them, because their tendency was opposite to the other extreme, then termed fanaticism; and, in managing all popular elections, did very great service. For the common people are not taken or drawn by the reason of things, but by shows, pretensions, and noise: and the just adherents to monarchy were defamed by the characters, invented and inflicted by these men, as being, at best, high-fliers for prerogative. His lordship had an universal acquaintance, and diffused a sort of amity with most persons considerable, in England; and all sorts of people, at times, had resort to him either upon visits, or for business: he never declined discoursing freely, and made no secret of his sentiments, which were entirely in favour of all just ways that supported the church and crown, and against all the oppugners of either. So that whoever came to spy upon him, got nothing but what he publicly professed. Therein he avowed his constancy to the laws that were sufficiently declared to that end; to all which, no exception could be made. But yet the faction, who had the law and the protestant religion so much in their mouths, hated him heartily for it: as for a principle, of all others, the most pernicious to their projects. Accordingly, whatever sort of people came to him, whose characters he partly knew, if they were, in any re-

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spect, plausible, he declined them not, hoping that if they made no impressions, in their way, upon him, he might make some, in his way, upon them: and, with that design, I have known him hold long discourses with some relations and others, of the country for the most part, whom he had an esteem for, to convince them, if possible, how mistaken they were in having such a mean opinion of the king and his measures, as lies had inspired into them; and to persuade them that the daily reports spread abroad for such purposes, were false: and I remember most of them, with whom he had (out of a sort of friendship) taken pains, sat giving him the hearing, but were not one whit moved; but, as I guess, looked upon him as a court lawyer that spoke to his point. His lordship hath recommended this demonstration to divers of them: "Keep a book," said he, "with two columns; and, in one, write the daily news and stories; and, in the other, against them, whether they prove true or false:" and he believed that not one in fifty would be found to be true. "Why then," said he, "should you let the news of the town sink at all with you?" For he found that, when they were pressed, they laid a fresh story in his dish; and so wonderful absurd as almost amazed him: as that the king had made a league with France, in order to acquire an arbitrary

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power in England.* That the king had sold to the French, the ship timber out of his yards, and sent carpenters to teach the Frenchmen ship-building, and the like: And, if his lordship had not had an admirable temper, he must have quarrelled. These were the innocents that pinned their faith upon some that would be thought of the country party in the House of Commons, who use to subtilize with those honest gentlemen, and send them away, as his lordship used to say, foxed with politics.

Caution habitual.

As his lordship's opinion was no secret, so he had acquired a way of expressing himself habitually secure. For, although all the company understood him perfectly well, yet his sense was so couched, that, if it had been delivered in the centre of his enemies, no crimination, with any force, could have been framed out of it: and this way he used as well with his intimate friends, as with strangers. This is an art worthy to be exercised by all people, and is useful in all times. For if men do not qualify their discourse, when they have their wits about them, and thereby create a habit of caution, it will fall out that, when disturbed with wine and passion, they will, in all companies, certainly let fly, without guard,

* A fact now established beyond all contradiction. See the *Appendix to Dalrymple's Memoirs*, and *Fox's Historical Work, passim.*

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just as, at other times, they used to do, and so expose themselves to trouble, or worse hazards. But his lordship, besides his caution in speaking, even in his political writings, though his reflections were of the actions and persons in his own time, his expressions were of such an universal nature, that no matter, or person in particular, might own them. And what signified the ranting dialect some used, but to indicate a false heart rather than a true one? And so his lordship found, as may be touched afterwards.

Free from trepans. Story of Mr. Claypole.

Upon this account his lordship was very free from trepans, as being known to be sagacious and cautelous, and not apt to give opportunities: for he entered not into promiscuous companies, nor dealt in the bottle; but had his friends often, and his servants always about him. Once, after dinner, a servant told him a gentleman waited in the next room (which he used as a closet) to speak with him: and his lordship, as he passed by, saw a couple of fellows stand in the passage, which made him think of evesdropping. And, being entered, the gentleman came up to him, and, "My lord," said he, "my name is Claypole." His lordship instantly knew him to be (as he was) a descendant of the once Lord Claypole, one of Cromwell's sons-in-law; and then turned round upon his heel, and, passing his two evesdroppers who were come nearer the door, went to his com-

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pany, and merrily told them what a vision he had seen. What his counterfeit lordship's business was, could neither be known or guessed at. But, in such cases, being alone with any person, that person is master, and may swear his pleasure.

Visits, at Serjeants Inn, and his lordship's regard to Sir Jeoffry Palmer's family, &c.

His lordship, at his chambers in Serjeants-inn, was always obnoxious to promiscuous conversation; for many would chuse to visit him, when they had him alone; where, commonly, the design was to pump him: for he was looked upon to be less guarded than really he was, and that, from whatever he said, something might be gathered. All which he knew beforehand, and framed his discourse accordingly. But his old acquaintance of the law, as Mr. Longuevile, Mr. Johnson, and others, were as at home with him. His lordship retained such a veneration for the memory of his noble friend and patron, Sir Jeoffry Palmer, that all the old rendezvousers with him, were so with his lordship; and, all his life, he used the same tradesmen, as barber, bookseller, shoemaker, sadler, &c., whom he employed so long as any of them lived; and all the kindred of that name, of which there were not a few, were courted by his lordship. And his daughter, Mrs. de la Fountain, he revered: and, in her family, though her husband was, in good order and virtue, (and who was not?) inferior to her, his lordship was next to a domestic. But he never was so well, as when any of his

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family relations, whom he was continually obliging, one way or other, were with him. And how he extended his benevolences to the remotest of his kindred, will be shown in fit place.

Suspicious acquaintance.

His lordship, at his meals, had usually none but acquaintance, or relations, such as had a sort of title to be so free; for he kept no public table, though a plentiful one. And, of these, some were in the confidence of the anti-court party. As, particularly, Mr. Paul Foley, who became an acquaintance through a sort of relation, and improved it much by communicating his observations in the learning of records, to which he had applied himself very closely. He showed his lordship a book which he had compiled, which was designed to go beyond the ordinary collectors, such as Cotton, Prynne, &c. His lordship grew every day more and more fond of that knowledge, and was glad of such an acquaintance, whose discourse was incentive to his desires; and, at that time, he had more leisure to attend to it, than when he was a practiser. But more of this elsewhere. How this gentleman signalized himself, afterwards, is no secret. But I can remember, so early, that I heard him say in his lordship's house, that "things would never go well till forty heads flew for it." He had also very singular opinions; one was, that "all foreign trade was loss, and ruinous to the nation." But some proceedings

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about that time, touched upon in the Examen, interpreted that paradox: for the mortal evil of foreign trade was the great supply it brought to the crown, by which it could be supported, without being continually at the mercy of the parliament for supplies. When his lordship was named in the House of Commons, in order to be criminated, he was pleased to say in the house, "that he certainly knew that person to be of arbitrary principles, because he had heard him discourse to that purpose at his own table." This behaviour of that gentleman, when his lordship stood most in need of the service of his friends, doth sufficiently demonstrate the necessity of his lordship's constant caution in conversation with all sorts, friends and enemies. For the time was so nice, that a word awry did a man's business, if he were unpopular; else, one would think I have too much exaggerated the cautious practice in all his lordship's converse. And yet, with ill people, even the utmost caution falls short, as was the very case with that gentleman. Mr. Tirrel also used to come freely to his lordship. I do not remember he then owned the design, which he hath, in part, executed since, of writing a History of England. But his discourse, falling on such subjects, was very agreeable to his lordship; though, at that time, he was looked upon as one of the anti-monarchists.

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Surprised into a factious dining cabal.

His lordship did not often dine from his own house; and, when he did, it was commonly at a particular virtuoso's, as with Sir Peter Lely, Mr. Hugh May, Sir Samuel Moreland, or the like.* Once, dining with Mr. Hugh May in Scotland-yard,† Sir Henry Capel, who was of his lordship's relation, and long acquaintance, made one. Among other discourse, Sir Henry Capel was urged much to say, why they, meaning the country party, urged a certain matter so violently in the House of Commons; and yet there was no tolerable reason, in all the debate, given for it. At last, he answered "that they did not use to give the true reasons that swayed them in debates, to the house." His lordship thought it a strange account. But, I believe, if it was so then, it hath been much more so since; and, as strange as it may seem to be, it is commonly the parliament driving principle. As the times grew warmer, his lordship endeavoured to be more retired, and less cared to dine where was any diversity of company. But once he was caught in a trap, and found himself in the head quarters of a dangerous cabal. It happened thus. Sir William Scroggs, a ranter, but (except in the affair of Oates) on the right side, was promoted to the chief justice's

* See an account of these persons, *infra*.

† [He was one of the surveyors of the king's buildings, and was the regulator of Windsor Castle.] *Note in the former edit.*

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place in the King's Bench. But, when the court interest in parliament was wavering, and very like to fall, and my Lord Shaftesbury, with his followers, appeared to have an ascendant, and was actually taken into the privy council, his King's Bench lordship thought the interest not to be slighted; and, accordingly, he opened a social commerce with them, and made one at their circulary dinings; and the turn came to dine with him. He was so obliging as to invite his brother chief of the Common Pleas, who went, not dreaming of his company, but expected that some noblemen, of another order, might be there. When the company was assembled, it consisted of the Earl of Shaftesbury, the Bishop of London, the Lord Macclesfield, and others of the most distinguished opposers of the court. They caressed his lordship very much as a new comer, whom they were glad of the honour to meet, and talked about a time to dine with him; all which, as they say, was "water in his shoes." But after dinner he got himself clear, and was as careful not to be so complimented any more. And he was much displeased with his superior chief, for engaging him so untowardly.

Character of Sir William Scroggs.

This Sir William Scroggs was made lord chief justice of the King's Bench while his lordship sat in the Common Pleas. He was of a mean extract, having been a butcher's son, but wrought

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himself into business in the law, was made a serjeant, and practised under his lordship. His person was large, visage comely, and speech witty and bold. He was a great voluptuary, and companion of the high court rakes, as Ken, Guy, &c. whose merits, for aught I know, might prefer him. His debaucheries were egregious, and his life loose; which made the Lord Chief Justice Hales detest him. He kept himself very poor, and, when he was arrested by King's Bench process, Hales would not allow him the privilege of a serjeant; as is touched elsewhere. He had a true libertine principle. He was preferred for professing loyalty: but Oates coming forward with a swinging popularity, he (as chief justice) took in and ranted on that side most impetuously. It fell out that when the Earl of Shaftesbury had sat some short time in the council, and seemed to rule the roast, yet Scroggs had some qualms in his politic conscience; and, coming from Windsor in the Lord Chief Justice North's coach, he took the opportunity, and desired his lordship to tell him seriously, if my Lord Shaftesbury had really so great power with the king as he was thought to have. His lordship answered quick, "No, my lord, no more than your footman hath with you." Upon that, the other hung his head, and, considering the matter, said nothing for a good while, and then passed to other discourse. After that

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time, he turned as fierce against Oates and his plot, as ever, before, he had ranted for it; and, thereby, gave so great offence to their evidence-ships, the plot witnesses, that Oates and Bedloe accused him to the king, and preferred formal articles of divers extravagancies and immoralities against him. The king appointed a hearing of the business in council, where Scroggs ran down his accusers with much severity and wit; and the evidences fell short; so that, for want of proof, the petition and articles were dismissed. But, for some jobs in the King's Bench, as discharging a grand jury,* &c., he had the honour to be impeached in parliament, of which nothing advanced. At last he died in Essex-street of a polypus in the heart. During his preferment, he

* The grand jury to whom the bill of indictment against the Duke of York for recusancy was presented, by Lords Shaftesbury, Russel, and others. (See *Howell's State Trials*, vol. viii. p. 179. *Memoirs of James II.*, vol. i. p. 590.) Roger North is not quite correct in saying, that nothing followed upon the impeachment, for we are told in the *Memoirs of James II.* (vol. i. p. 623,) that "his Majesty was forced to yield up Scroggs, so far at least, to their malice, as to discharge him from his employment, but recompensed it afterwards with a pension." For an account of the proceedings against Scroggs, both before the privy council and in parliament, see the *State Trials, ubi supra;* see also *Roger North's account of him in the Examen, and Burnet*, vol. vi. p. 1425). "I have read somewhere," says Swift, "of an Eastern king, who put a judge to death for an iniquitous sen-

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lived well, and feathered his nest; for he purchased the manor of Burntwood in Essex. It was observed of him, that every day, in his house, was holyday. His lady was a very matronly good woman; she died long before him. He had one son, who lived not many years after him; for he was a sufferer in the wars of amour. He had two daughters; one of whom was married to Sir Robert Wright, and lived to see his misfortunes; for at the Revolution he was clapped up in Newgate, and there died. The other daughter, sometime the widow of Mr. Kilbie a lawyer, married the truly noble Charles Hatton,* and may be yet living.

Of putting down coffee houses.

About this time, Sir William Jones being his majesty's attorney-general, there was such licentiousness of seditious, and, really, treasonable discourse in coffee-houses, of which there were accounts daily brought to the king, that it was considered if coffee-houses might not be put down.

tence, and ordered his hide to be stuffed into a cushion, and placed on the tribunal for the son to sit on, who was preferred to his father's office. I fancy such a memorial might not have been unuseful to a son of Sir William Scroggs, and that both he and his successors would often wriggle in their seats as long as the cushion lasted." (*Drapier's Letters*, No. V.)

* The son of Lord Hatton. He is called by the author, in his *Life of Dr. John North*, "the incomparable Charles Hatton," but no further account of him has been preserved.

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Then it was scarce possible to cohibit people's talk; but, if the opportunities of promiscuous and numerous assemblies of idle spenders of time were removed, ill men would not be able to make such broad impressions on people's minds as they did. And the most likely way to do it was thought to be by a proclamation recalling all their licences, and prohibiting the granting any new ones; and, under this, divers points of law were started, whereupon the king commanded, that all the judges should attend, to give their advice touching the proclamation: and his lordship and five other judges, being all that were in town, attended. His lordship, upon the main, thought that retailing of coffee might be an innocent trade; but as it was used to nourish sedition, spread lies, scandalize great men, and the like, it might also be a common nuisance. But I wave here the stating the several points, and the resolutions of the judges, and wherein they differed in opinion, because it is fully accounted for in the Examen. But I remember well that the faction was much incensed at this suppression of coffee-houses, without which it was impossible for them to carry on their trade. And, in particular, they said that Mr. Attorney should answer it in parliament; and although the leaders, then, were his good friends, and he had reason to think jested with him, yet this same answering in parliament was a serious business with

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one who had a natural timidity which his reason could never conquer: and it occasioned him no slight raillery from his party friends.*

* A more detailed narrative of this transaction is given in the *Examen*, p. 138, where North, as usual, endeavours to defend the very arbitrary measure adopted by the court, to check the expression of public opinion at this period. With regard to the illegality of the proclamation recalling the licences of the coffee-houses, no doubt can be entertained; and even the court was so satisfied of its impolicy, as speedily to withdraw it. See an account of this affair in *Kennett's History*, and in *Harris's Charles II.*, vol. ii. p. 263.—The following description of one of these obnoxious receptacles of politicians is drawn from a lively paper in the *Harleian Miscellany*, vol. viii. p. 7, entitled "*The Character of a Coffee-house, with the Symptoms of a Town Wit.*"

"A coffee-house is a lay conventicle, good fellowship turned puritan, ill-husbandry in masquerade, whither people come after toping all day, to purchase, at the expense of their last penny, the repute of sober companions; a Rota-room, that, like Noah's ark, receives animals of every sort, from the precise diminutive band, to the hectoring cravat and cuffs in folio; a nursery for training up the smaller fry of virtuosi in confident tattling, or a cabal of kitling critics, that have only learned to spit and mew; a mint of intelligence, that, to make each man his penny-worth, draws out into petty parcels what the merchant receives in bullion; he that comes often saves two-pence a week in Gazettes, and has his news and his coffee for the same charge, as at a three-penny ordinary, they give in broth to your chop of mutton," &c. In the same volume, p. 75, we have a vindication of the coffee-houses, "asserting from reason, experience, and good authors, the excellent use and physical virtues of that liquor, with the

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As to the business of lies and libels, which, in those days, were an intolerable vexation to the Of lies and libels.

grand conveniency of such civil places of resort and ingenious conversation."

It was not until the reign of Charles II. that coffee came into use in England. (See *the Life of Sir D. North.*) Under the year 1637, Evelyn, in his *Diary*, says, "there came in my time to the college, one Nathaniel Conopios, out of Greece. He was the first I ever saw drink coffee, which custom came not into England till thirty years after." (*Memoirs*, vol. i. p. 7.) It is said by Anderson, in his *History of Commerce*, vol. ii. p. 556, that, "in the year 1652, one Mr. Edwards, a Turkey merchant, brought home with him a Greek servant, who understood the roasting and making of coffee, till then unknown in England; and that this man was the first who sold coffee, and kept a house in London for that purpose;" so, when Dr. John North was a student at Cambridge, (about 1662) "coffee was not of such common use as afterwards, and coffee-houses but young." (See *his Life*)

It is observable that the coffee-houses became obnoxious to the court, at an earlier period than to which the text relates. Clarendon gives an account of a conversation which he had with the king in 1666, concerning "the licence which was assumed in the coffee-houses;" upon which occasion the Chancellor proposed either totally to suppress them, or "*to employ some spies*, who, being present in the conversation, might be ready to charge and accuse the persons who had talked with most licence in a subject that would bear a complaint." "The king," adds the noble historian, "liked both the expedients." (*Life of Lord Clarendon*, vol. iii. p. 678.)

Tea appears to have been introduced into common use about the same time as coffee. "I did send," says Pepys, "for a cup of *tee* (a China drink), of which I never had drunk before," vol. i. p. 76, *sub anno* 1660.

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court, especially finding that the community of gentle and simple strangely ran in with them; it was moved that there should be more messengers of the press, and spies, who should discover secret printing-houses, (which, then, were against law), and take up the hawkers that sold libels, and all other persons that dispersed them, and inflict severe punishments on all that were found guilty. But his lordship was of a very different opinion, and said that this prosecution would make them but the more inquired after; and it was impossible to hinder the promulgation of libels: for the greediness of every one to get them, and the high price, would make men, of desperate fortunes, venture any thing: and, in such cases, punishments never regulate the abuse; but it must be done, if at all, by methods undermining the encouragement: yet, if any were caught, he thought it was fit to make severe examples of them. But an extraordinary inquisition to be set up, and make so much noise, and the punishment falling, as was most likely, not on the authors and abettors, but some poor wretches that sought to get a penny by selling them, would, as he thought, rather incense, than abate the abuse. His notion was that his majesty should order nothing extraordinary, to make people imagine he was touched to the quick; but to set up counter writers, that, as every libel came out, should take it to task,

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and answer it. And, so, all the diurnal lies of the town also would be met with: "for," said he, "either we are in the wrong, or in the right; if the former, we must do as usurped powers, use force, and crush all our enemies, right or wrong. But there is no need of that, for we are in the right; for who will pretend not to own his majesty's authority according to law? And nothing is done, by his majesty and his ministers, but what the law will warrant; and what should we be afraid of? Let them lie and accuse till they are weary, while we declare at the same time, as may be done with demonstration, that all they say is false and unjust; and the better sort of the people, whom truth sways, when laid before them, will be with us." This counsel was followed,* and some clever writers were employed, such as were called the Observator and Heraclitus, for a constancy, and others, with them, occasionally; and then they soon wrote the libellers out of the pit, and, during that king's life, the trade of libels, which before had been in great request, fell to nothing. And this was one of the visible good effects of the measures of the court and ministry,

* Lord Halifax appears to allude to this scheme in his *Character of a Trimmer*, p. 91. "Our Trimmer thinks it no advantage to a government to employ small authors, whose officiousness or want of money may encourage them to write."

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at that time, which were, in all things, to act conformably to the established religion and the laws. I will not meddle here with the plots of Oates and Fitzharris, and all the other, both sham, and real, in that king's reign, because they are fully set forth in the Examen; only, in order to introduce his lordship's opinion and reasonings upon them, I shall just walk over them in the following manner.

Fury of Oates's plot, to be checked by a pamphlet.

After the year 1666, the reign of king Charles II. was happy in being free from plots, I mean such as publicly appeared, until about September 1678, when that devilish imposture stiled of Oates, came forth, and afterwards there followed the horrid conspiracy, called the Rye plot, and, as fringes to these, other minor plots, as will be found in the accounts given of them in the Examen. During this time his lordship sat in holy peace, under his old oak the court of Common Pleas, which had nothing to do with criminals; and in the grand commission of oyer, &c. at the Old Bailey, where the Oatesian storms were impetuous, the lord chief justice of the King's Bench steered the vessel, and the other judges had little or no share in the conduct, whereby his lordship, in the main, was rather an observer, than an actor, in those proceedings to which hung the issues of life and death. He was not a little concerned to see men noised out of their lives, as

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the twelve priests were, and that nothing could resist the fury of the people, that, like a hurricane, pursued them. And that which was most lamentable was, that the king's attorney * should be possessed, and the chief justice, † that presided, should be taken in the head, and even the parliament sounding loud, and the populace little less than distracted; and all tending to blood, of which no end was discerned; but it seemed that question and conviction were one and the same crisis. His lordship saw plainly that this popular insanity could not even by the strongest reasoning be moderated, but to do that must be a work of time: and as for open opposition by pamphlets, there was enough published by some Roman Catholics; but instead of making any impression, however cogent their reasons and arguments were, the attempts were cried out upon, as so many instances of a shameless impudence, pretending to prove false what the community were resolved should be true, and the party name (that is papist) held forth, was a sufficient confutation of them all. Nevertheless his lordship was of opinion that a pamphlet might be contrived and wrote with such historical deductions and temper, that might in some measure, if not wholly, qua-

* Sir William Jones. † Sir William Scroggs.

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lify this distemper of the public, and that, what direct opposition could not, insinuation might effect.

The instructions, memoirs of faction.

Pursuant to this thought, his lordship applied himself to prepare instructions for some expert pamphleteer, who had a popular style and address, to treat upon the subject of Oates's plot; and after his way of extempore writing, which was familiar, and just as he used to speak, he drew up these instructions*, which, so far as they go, might have passed for the pamphlet itself, but he stopped at the facts, which were left to the writer to deduce as he saw occasion. He had no opinion of his own pen for such purposes as these, and it also required more time and thought, than he could spare, to work them up to a height sufficient to fall upon and crush a popular prejudice. I do not know that these instructions were ever delivered out to be made use of, but believe they were not, and that he kept them by him so long, that, new scenes of affairs emerging, they were become less needful. After the discovery of the Rye conspiracy, his lordship's mind was so touched with

* Sir John Dalrymple has given some extracts from a MS. of the Lord Keeper North, relative to the origin and history of the Popish plot, which probably form part of the instructions here alluded to. They have also been inserted by Mr. Howell, in his edition of the *State Trials*. (See vol. vi. p. 1498.)

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the dismal effects of faction and sedition, in the reign of King Charles II. that he fancied to compose their history, which, in the same extemporary way, he deduced from the Restoration down to the conclusion of that discovery, and gave his paper to a friend, desiring he would write it over with large margins, that he might adjoin such additions and alterations as he should think fit to make; which was done; and he made some, but very little, alteration, as putting out a name, or the like, that might give offence. (Part of these papers are in the Examen.) As to his lordship's personal acting and concern in the proceedings grounded on the many plots that appeared in his time; first, as to Oates, he had not the least hint or intimation of any such roguery, as his was, before the information or narrative was sworn before Justice Godfrey, and then not early, but as the matter became bruited abroad. He once heard Oates preach at St. Dunstan's, and much admired his theatrical behaviour in the pulpit: he prayed for his very good lord and patron the Duke of Norfolk, which made his lordship suspect him to be warping towards popery. And when his lordship came to know the particulars of his discovery, although the king's life, forsooth, was to be saved, he took the whole to be an imposture calculated to disturb the public, and bring evils upon his majesty; and after he had discoursed with the

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Earl of Danby, who at first appeared a fautor of it, his lordship found such desultory steps taken, as could agree with nothing but a cheat, and was confirmed in his opinion accordingly.

Concerned only in the conduct of Nat. Reading's trial, but little in others.

I mentioned his lordship's felicity in having, by his place, little to do with criminals; he had but one of the many plot trials to manage, and that was of Nat. Reading,* who was not charged for treason, but for subornation and tampering. He acted as counsel for one of the lords in the Tower, committed upon testimony of Oates and his colleague Bedloe; and treated with Bedloe for a reward, if he would soften his evidence against his client; and Bedloe, by crafty advice, drew him into a snare, so that there was clear evidence of subornation against him. Whatever the plot was, this was as foul a fact as could be, when a counsel at law shall tamper, and by bribes corrupt the king's evidence, in a case of high treason: and upon his trial he was convicted, and punished with the pillory. In the rest of the trials, as they are printed, his lordship scarce spoke, but Chief Justice Scroggs led the van. I find in one of them, his lordship took occasion to say, "As for the plot, that is as clear as the sun;" which shining irony might have been spared. But the

* See his trial. (*Howell's State Trials*, vol. vii. p. 259.) Reading had been secretary to Masaniello, during the insurrection at Naples. See a further account of Reading's Trial. (*Examen*, p. 240.)

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behaviour of all the judges, except the aforesaid chief, was passive; that is, without interposing their opinions of the evidence, and the credibility of their story; which is often done by judges, for assistance of the jurymen, in common trials; and many, in latter times, have thought that the same ought to have been done here. And nothing can qualify the silence, but the inconceivable fury and rage of the community, gentle and simple, at that time, and the consequences of an open opposition to the chief, whose part it was to act, as he did, demanding no assistance of any of them; which opposition might have been fatal in many respects: for the credit of the witnesses must have been impeached, which the time would not bear; and it was not in their office to intermeddle; for, as to the fact, the jury is to answer. When it is so done by the co-assessors, it is for discretion, and not duty; the most cogent reason was, that the prejudice was so universal, and strong, that if an apostle had spoke against, no impression had taken place, nor had it done the prisoners any service; but on the other side, not only the rabble, but even the parliament itself, had flounced at it; which consideration turned the scales of the discretion, and made those judges rather let a vessel drive, which they could not stop, and reserve themselves for fairer opportunities, when such might happen, for them to do some good, without

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pretending to remove mountains. Thus much I have thought to allege in favour of the judges passiveness at those trials; whereof the full strength of reason can scarce be made appear so sufficiently as the proper time, in real circumstances, demonstrated.

Error in condemning Lord Stafford.

That which, in all the course of these outrages, most affected his lordship with admiration, as well as commiseration, was the deplorable case of the Earl of Stafford, who was pronounced guilty, seemingly, upon the grossest error, in common justice, that ever was known. Very few, if any, of the peers that condemned him, would own that they believed the witnesses, who swore the treason against him; and his lordship expostulated with some of them (that he could be free with) to know how it was possible, being so persuaded in their own minds, they could declare him guilty? Their answer was, that they were not free in the case, but were bound to judge according to the proof of facts; and here the witnesses swore the facts, *ergo*, &c. His lordship replied that this was contrary to the very institution of trials; for it is the proper business of peers and juries to try, not the grammatical construction of words, which every school-boy can tell, but the credibility of persons, and things; which require a collation of circumstances, and a right judgment thereupon; and God forbid that the worst of villains should

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have it in their power, by positive swearing, to take away any man's life, or estate; and it is so far from that, that it is every day's direction of judges to jurors, viz. if you believe the witnesses, find, else not. This error is reasonably to be supposed to have happened to many in sincerity, though some fancied a spice of the politic in the case, lest it might prove as happened when the not guilty lords were mobbed in Charles I.'s time. But here the case was so far otherwise, that, of the two, the guilty side was in more danger of popular insults than the not guilty.

His majesty's justice and clemency, and candour of all the proceedings.

I might properly here enumerate and particularize the many false shams, which, after the mighty Oatesian engine fallen, troubled the court, and also at large decypher the Rye conspiracy, because his lordship had the most to do in conducting the several examinations of the secretary's office, and to see that what was done should be in due form, and according to law; but all those matters are so well described by his lordship, in his papers before touched, that a transcript would be the best account, which here would be superfluous, because it is already to be found in the Examen.* His lordship's greatest content lay in his majesty's presence, who almost constantly attended, and was himself witness of the sincerity, diligence, and

* Chapter V. of the *Examen* is devoted to the history of the Rye-house plot.

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prudence of his ministers; whereas accounts, coming to him by the report of others, would be defective, and, probably, not without some sinister misrepresentations. And, on the other side, the ministers, and particularly his lordship, as he often declared, had the pleasure of observing his majesty's clemency, justice, and inclination to mercy; which, through the whole proceeding, were egregious. He punished no man, against whom the evidence did not charge the treason home (though in other respects they were guilty enough) in case they declared all they knew; nay, divers traitors, that made ingenuous confessions, were spared, though no great use was to be made of them; and the king said, "he would not take away any man's life, because he knew no more." Of these divers brought before the king, came on their knees, holding up their hands, begging his mercy, for their poor wives and children's sakes; which gave the king (always facetious) occasion to say, "he wished all his subjects had wives and children, for whom they had most regard." And for the honour of his majesty and his ministers, I must observe that no man was kept long in prison, without bail, or trial, and none brought to trial without a convicting evidence, no rewards, nor tempting encouragements, leading questions, threats, or other undue means held forth to draw from them farther than plainly to declare all they

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knew. And, after all, that the effects of the chief criminals that suffered, were not made a prey to courtiers, but, in divers instances, graciously restored to the wives and children of the sufferers. And if ever, in case of a conspiracy less execrable than this of the Rye, there is an instance of justice so legally pursued, and, in the conclusion, well tempered as here, I desire it may be brought forth and known, as this now is, to the intent it may never be forgot.*

Among other guilty persons, some Scotchmen were discovered and taken; and, because their scene lay in Scotland, they could not be indicted and tried here; therefore it was thought fit to send them into their own country to be tried. But the time being nice, and the court desirous that no measures should be taken, which might be pretended not legal; and it being the mode to cavil at every step, and raise moot points, like finding knots in bulrushes, as was done in this particular case, whether these men might be sent into Scotland or not: the king thereupon ordered

Scotchmen sent home to be tried.

* The inveterate prejudices of the author no where manifest themselves in a more odious light, than in the above passage, in which they have led him to justify the cruel and illegal proceedings in the cases of Lord Russell and Algernon Sidney. The trial of the latter, as it is justly observed by Mr. Fox, "exhibited such a compound of wickedness and nonsense, as is hardly to be paralleled in the history of juridical tyranny."

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his attorney-general to give his opinion in writing; which was, that his majesty might send his Scotch subjects into Scotland, to be punished for offences committed there.

Penned the declaration, and that well accepted.

Before we part from this grand conspiracy, I must remember that it was thought fit, for the satisfaction of the people's minds, who were in a great amaze, and consequently doubt of the reality of this enorme plot, to publish a royal declaration of the very facts of it, and of all the material circumstances, punctually stated, and all out of the depositions of the witnesses; to the veracity whereof it should not remain in any one's power to object; and so as to leave no colour for any person to doubt the justice of his majesty's proceedings thereupon. This was prepared and composed mostly, if not wholly, by his lordship, which I will with more assurance profess, because I have heard his lordship often, in discourse, express most of these singular notions and turns that are in it; and the like may be found in his writings: as for instance—"that, after all endeavours by way of sedition failed, the rebels resorted to arms, and assassination;" with other as significant passages. The declaration itself is penned with that exquisiteness and caution, and all upon the steps of truth, made good by testimony, as may well be ascribed to one of his lordship's accomplished knowledge of the law, experience of affairs, and

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happy turns of thought and expression in business. And I might have inserted this in the very words, as part of his lordship's pen work; but have declined so to do, because, at the time, it must needs have been laid before, and considered by the rest of the ministry, and by them, in some respects, altered or corrected, as they might think proper. After this declaration was published, and (as was commanded) read in churches, the people returned their joyful sense of the king's safety, after the great danger he had been in, by numerous addresses from all parts of the kingdom, which gave such a stun to the rebellious party, and their friends abroad, that little sign of any resurrection to action appeared in them, while that good king lived; though it is presumed their trance was not so profound, but they lay watching for fresh opportunities, from alterations in the methods of the government, and the ministry, to be moving again, and at length they were gratified sufficiently, and due use thereof was made, by the changes that followed.

Dr. Sprat's history of the Rye plot, sneakingly recanted.

But his lordship did not think this declaration enough; for, by many years' practice of lies and misconstructions of the public administration, the people's minds had been too much corrupted towards a prejudice against their government, and they were become inclined to believe all the evil that was lyingly affirmed of it: and this disease

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could not be cured on the sudden, but by time and application of due remedies to set them right. Therefore his lordship advised that not only all the depositions, as they were sworn, should be published in print, but also, considering such matters would not be pleasant or inviting to be read by the common people, that a well-penned relation of the whole conspiracy should introduce them; which should be made as inviting to read, as the others apt to convince, which must happen, being all along referred to them. The advice was approved, and Doctor Sprat, then Bishop of Rochester, a most polite English writer, was employed to do it; and, having all the depositions truly copied before him, he performed the task most completely, as the book itself sufficiently demonstrates.* This had been a stately monument of honour to that reverend prelate, if he had not kicked down all the merit of it, by a pusillanimous behaviour; for, after the Revolution, when he feared being called to an account for acting in king James the Second's high com-

* *The History of the Rye House Plot*, by Sprat, was drawn up under the authority and direction of the court, and is entitled to little credit. In the second of the Author's *Exculpatory Letters to the Earl of Dorset*, he relates, that shortly after the death of Charles II., James called for the papers, and having read them and *altered various passages*, caused them to be printed. This "stately monument of honour"

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mission court, he published in print two degenerous epistles of recantation to the Earl of Dorset: the latter most sneakingly apologizeth for his writing this book, in which I have not observed one sentence, which, even in that time, could justly be made criminal: he says it was unwillingly drawn from him; and he hopes he is not to answer for what he did not, as well as for what he did write; and that it was showed to the Lord Keeper North, who added some things, that had escaped him; whence we are to suppose, that all, which did not then please, must be attributed to the Lord Keeper, and not to him. A stately apologetic! But grant half of it had been added, or corrected by the Lord Keeper; who could better adjust such a relation, than he who was at the helm of all the examinations, and had both skill and will to do it according to truth? His episcopal lordship had done well to have shown, in his letter, what was so added, and then the saddle would have fallen on the right horse, or at least to have expressed wherein he was to have been a

was, in fact, nothing more than a partial and garbled narrative, written to serve the purposes of the court. Oldmixon, who calls it *a Romance*, tells us, that South, when requested by Charles II. to write the history of the plot, refused to perform the task, which the mean and subservient Sprat did not hesitate to undertake. In the *Examen*, (p. 417,) North has inserted a laboured eulogy of the Bishop's performance.

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sufferer, if he had been called to answer for the whole as it was; but some men's timidity offuscates their understandings, though otherwise never so bright.

The vindication of vindications, by the committees of inquiry.

It would be an ungrateful thing to pass over in silence the greatest vindication of all these proceedings against the Rye plotters (in the direction of which his lordship had the greatest share) that ever happened to a government, and its ministry, since the world began. And that is (I say not of the plotters themselves, but leave that to sober reflection, but) of the adverse party, in full rage and power, and breathing all that revenge which formerly they had menaced, and confirmed with numberless oaths, and execrations. If this be the case, it will not be thought I have here dealt in hyperbole. After the Revolution, when the assemblies of Lords and Commons met at Westminster, the matters, by way of inquisition retrospected, are reducible to two heads. One was concerning the proceedings in the city of London, in the choice of sheriffs, and the consequences; and the other was the trials and convictions of the culpables in the Rye conspiracy. The former was undertaken by the Commons, and the other by the Lords.* The Commons summoned Sir

* See the Report made to the House of Lords (from the *Lords' Journals*) *Howell's State Trials*, vol. ix. p. 951. See

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John Moor, that had been lord mayor, and Sir Dudley North, with Sir P. Rich, his partner, sheriffs, and all persons who had to do in the city, about the common hall. And these were examined touching their right, and the manner of their behaviour, and they answered plainly and candidly; and though tempted to accuse persons who were dead, as the Lord Keeper North, and Sir Leoline Jenkins, of somewhat they could have called crime, answered negatively, and, to their own charge, fully, and went no farther; and finally, there being no fault found in them, they were all discharged, and nothing more said to them. The other inquest, concerning the Rye criminals, went deeper, and every one, that was examined, was sworn; for the Lords may administer an oath, but the Commons may not. The executions of the criminals (for brevity) were prejudged to have been illegally inflicted, and so not inquired into, but the suffering persons were presupposed to have been murdered, and the committee of Lords was appointed to inquire by what and whose means those persons came to be murdered, or to that effect, as the journals will show: and for this reason, that committee was called the committee of murder; which must needs terrify those that were summoned to ap-

also the entertaining account of this inquiry in the *Life of Sir Dudley North*, and in the *Examen*, pp. 620, 621.

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pear before it. In short, they summoned all the officers, witnesses, some counsel, and every particular person who had, as they were informed, said or done any thing relating to any of those trials; and, as I said, examined all upon oath, in order to find out some irregularity, or corruption, in what had been done about these matters. And after all the teasing, screwing, good words, and bad words, as some thought fit to use towards particular persons examined, there was not any one peccadillo discovered, nor any action or speech of any persons, in or out of authority, made known, which could be laid hold on as an abuse or misdemeanour, that might be censured; and so the committee fell, and no more news of murder. And this is that vindication of vindications I mentioned before; which, for the honour of his lordship, as well as the rest of the loyal party, I have extended more fully than otherwise needed to have been. And, for the close, I must needs observe, that it was wonderful, that in the ardour of those heated times (which may be imagined, but hardly expressed) the ministers and agents should not only be so intelligent, but withal careful of the forms and substance of justice, and their duty, that, on such a dire inquest as was not forethought ever to come over them, not one fault should be found, neither wilful, nor out of human infirmity or oscitancy.

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O the virtue couched in Horace! *Integer vitæ scelerisque purus.*

But, to return; in the greatest difficulty that ever fell upon King Charles the Second, from the parliament, and indeed the whole nation, which was corrupted with the air of Oates's plot, the king made a dangerous experiment; which was a reform of his privy council, dissolving the old one, and constituting one anew; which took in the Lord Shaftesbury as president, and the heads of the malcontent party of both houses; as may be seen in the Examen.* This struck the loyal party to an astonishment; but the king made use of his best friends, and, among others, took in the Lord Chief Justice North; which made him wonder to find himself in such company: but all turned right at last. Not long after this, his lordship was taken into the cabinet; where, as to all matters that related to the law, and ordinary policy, upon the foot of the king's true interest, he had almost a judicial regard.

* "In 1679 he ventured upon a most dangerous experiment, which was the dissolving his privy council, and appointing a new one. And in that he took in the Earl of Shaftesbury in the place of lord president, and divers others of the prime leaders of faction. And because there were certain pairs amongst them, as two commoners, &c. folks said, they went into the council as beasts went into the ark." (*Examen*, p. 75.)

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Earl of Danby impeached, pardon pleaded, disputed.

The Earl of Danby thought he could serve himself of this plot of Oates, and accordingly endeavoured at it; but it is plain that he had no command of the engine; and, instead of his sharing the popularity of nursing it, he found himself so intrigued that it was like a wolf by the ears; he could neither hold it, nor let it go; and, for certain, it bit him at last: just as when a barbarous mastiff attacks a man, he cries poor cur, and is pulled down at last. So the earl's favour did but give strength to the creature to worry him. Herein he failed, 1. In joining to aid a design of which he did not know the bottom. 2. In thinking a lord treasurer, that had enriched himself and his family, could ever be popular. And the plot went so far against him that he was within an ace of being accused of Godfrey's murder. But this was late. In the mean time, upon the producing of some letters of his to Mr. Montagu the ambassador in France, in the House of Commons, importing a treaty between the king of England and the king of France, for money to be paid upon the peace, he was impeached;* articles of high treason were brought up, and he was committed, and after-

* See the proceedings in *Cobbett's Parliamentary History*, vol. iv. p. 1060. Much light is thrown upon these complicated intrigues, by the Letters of Barillon, the French ambassador, published by Sir John Dalrymple, in the Appendix to his *Memoirs*.

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wards pardoned, the pardon pleaded, and the validity of it disputed by the Commons. It was first considered, if the earl should venture to plead the pardon, or no, lest (in casé the pardon were disallowed, and his plea over-ruled) it would be peremptory, and he not be admitted to plead over, as *non cul*, or what other special matter he had to defend by.

Case of the Earl of Danby's pardon considered.

But notwithstanding this hazard, that if the Lords had judged against the king's power to pardon after an impeachment lodged in the House of Peers, he might not be allowed to have pleaded over, taking the pardon pleaded, as is usually held, to be a confession of the fact: yet he did plead his pardon to the impeachment, and relied upon it. And so it stood, at the dissolution of the Westminster parliament, ready to be argued and debated in the Oxford parliament. And, if the expedite dissolution had not prevented, it might have made much ado between the Lords and Commons; for it was not probable that the Lords, by enervating the king's pardon, would have left themselves liable to be impeached, and out of the power of the king's mercy. But the faction, in all discourse and writing, asserted the non-validity of the pardon, with all the earnestness that could be; and, at the same time, the men of law stared at such a pretence, as an unheard-of innovation, accounting the offence in the impeachment to be

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the same as in other courts that have cognizance of it; that is, treason against the king; which, as all felonies and misdemeanours are, is punishable at the king's suit, and may be released by him; the impeachment being but as an indictment in the high court of parliament, which is the king's suit.*

The extravagance of arguers for wilful predeterminations.

There is a certain heathen English philosopher that says, "when reason is against men, men will be against reason;" which notable, worldly saying never shined brighter in any instance than in this; for it is hard to pick out of the whole law a maxim more sure than "that the king can pardon all high treasons" universally. And yet, when passion was at work, and resolution taken to urge the Lord Danby to the death (for what reasons; whether to press some secrets out of him, or otherwise, touching the desperate dependencies of the time, I attempt not to say here) it is no wonder that arguments, such as they were, grew up like mushrooms. His lordship used to observe the method, when points were previously resolved upon, which could not be maintained directly; as here, "that the king cannot pardon." First, say they to them-

* This question was finally settled by the statute 12 & 13 Will. III. c. 2. by which it is enacted, that a pardon shall not be *pleadable in bar* to an impeachment; but this act does not prevent the king from pardoning after the impeachment is determined. (See *Blackstone's Com.* vol. iv. p. 399.)

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selves, is there any case of offences by law, that the king cannot pardon? yes; private rights, as appeals, and common nuisances. Say you so? then this impeachment is for a right of the people, and is their private suit by their representatives the Commons; and, rather than fail, call the offence a nuisance. And, turning the tables, see how with positive naming and asserting, if people importunely give way to it, and quit the plain text of the law, any thing may be stood upon. It may be proved that the king can pardon bonds and mortgages. For ask, first, what can the king pardon? answer, outlawries, and trespasses *vi et armis*. Then, because a man may be outlawed in debt, call the bond an outlawry; and, because a man may enter by virtue of his mortgage, call it a trespass with force. It will be said that these points are too impudently urged: I grant it. And what is to be said of the other; for, in kind, they are the same? his lordship was always of opinion that all false reasonings, in matters of life and property, were of dangerous consequence; and that men are not aware of the mischiefs to the public, when, from high places, times serve themselves of them. For which reason his ordinary sentence on such occasions was, *nova, non vetus orbita fallit*.

The bailing of the earl by the King's Bench,

I do not meddle here with the history of the case of the Earl of Danby at large. It may be

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which his lordship thought not practicable.

found in the Examen, and, for fail, in his own memoirs. But I cannot omit one passage, touching only his lordship's concern respecting the parliament: and that is the point of his being bailed; wherein his lordship differed from some of his brethren. The question turned upon the authority of parliament. He stood committed by the Lords, upon his impeachment, when the Westminster parliament was dissolved; and, at the same time, the untried lords, committed for Oates's plot, lay there on the like account. And now both the earl and the Popish lords thought that, by joint influence, they might get to be bailed. Accordingly, upon the return of an Habeas Corpus, his lordship, the Earl of Danby, was brought up and appeared in the King's Bench court.* The case made a great noise, and raised a great expectation what would be the issue. His lordship, being consulted (though not of that court) answered, that he was of opinion that the Court of King's Bench, being inferior in jurisdiction to the House of Lords, could not bail their prisoner, after he had been charged by special articles: for they had no means to bring down the record, whereby to determine any thing of the cause of his commitment; and, for aught that they could judicially know, he might be attainted of the treason. It is certain that the Lord

* See the report of the proceedings, in *Shower's Rep.* vol. ii. p. 335.

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Jeffries, then chief justice, in court, refused it; and yet he was a great stirrer up of the point, in order to gain the other judges to countenance his (then declared) opinion for the bailing; which was taken ill, as may be touched elsewhere. So the lords were not bailed at that time. But, in the reign of King James II. they were set free; and (with the peace of all forms) I think very justly; for it is a prodigious injustice to hold men in prison perdue, without any trial, or recourse for liberty: and, if the giving it was irregular, it was erring for justice; and one would think that such consideration might purge the irregularity. But nothing hath ever been said against it, in public, yet; and, so far, all is well. His lordship had a revelation in his mind, that this bailing of Danby was a thorn pushed towards him; though nothing came of it.

An high steward necessary upon impeachments. His lordship's thoughts of the *magnum concilium*.

While the case of the Earl of Danby depended in parliament, there was a factious pamphlet published, which aimed to prove the judicature of the Lords almost sovereign; and that all courts, ecclesiastical as well as temporal, were subject to it, and appealable; that the house was the *magnum concilium*, or great council, in the sense of ancient records; that, in trials for treason, the Peers were judges of the court; and that there was no other court but the house itself; and that there was no need, nay, it was an usurpation, to have a lord

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steward. For the Commons demanded of the House of Lords that they should pass sentence upon the earl's plea of his pardon; and the Lords addressed the king to appoint a high steward, in order to the trial of these impeachments; and so it was wrangled off and on till the session ended. But his lordship, provoked by this pamphlet, but more to see people mistake the laws, and strike so hard at foundations, composed an answer to that pamphlet,* showing that a lord steward and his court, as well in parliament as out of it, are necessary to the trial of a peer; and that the lords take the place of parity, pursuant to Magna Charta. But the law and the sentence are of the court, and not of the peers; and farther, that the *magnum concilium in parliamento*, or the great council in parliament, was, anciently, not the peerage, but all the officers of state, and such as the king should call to serve in that capacity, and that the *placita in parliamento*, or pleas in parliament, came before the great council juridically, and not before the peers. But, of late years, that jurisdiction, which is the king's, is executed by the peerage; and the council remains only in the capacity of assistants: and so it is like to continue.

* An imperfect copy of a MS. tract is preserved amongst the Hargrave MSS. (*Catalogue, No.* 299) which is supposed by Mr. Hargrave, to be the answer here alluded to. (See the *Preface to Lord Hales' Jurisdiction of the Lords*, p. 177.)

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His Lordship's opinion of the Exclusion.

It may be expected here that an account should be given how, and in what manner, as well as to what purpose, his lordship was concerned in that great affair, promoted and known by the term Exclusion. It was a bill, promoted by the Commons in the little and latter Westminster parliaments, to exclude the Duke of York, by name, from succeeding to the crown of England. The steps and conduct of it, and what disappointments it had, history must show. I know only so much, viz. that his lordship looked upon it not to attack the succession more than the present monarch. For, if such a foundation were once laid, whatever importunity prevailed to gain it, there would be the same, with very large increase, to obtain all the power of the government out of the king's hands, upon pretence to fortify the exclusion; —for it would be said, it is true, there is a law; but what is that without power? mere paper. And, then, the militia, and all the civil commissions, must fall, as a sacrifice to the exclusion, into the hands of the king's enemies.

The question of right, whether the House may impeach commoners capitally.

About this time, in the House of Commons, it was made a question whether they had a right to impeach commoners, in the House of Peers, capitally, or not? Against that power it was alleged that, if commoners are condemned by the Lords, they lose their challenges; and their humble estate is not so sensible to those great men, as it would

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be to their equals. Therefore it was provided by Magna Charta—*Quod super nullum ibimus nisi per judicium parium, aut per legem terræ.* Which sentence couched two sorts of trials; one of the fact, the other of the law. The latter cannot be *per pares*, but by the court who judge upon the fact *per legem terræ;* and the fact, which to try is the work of the Peers, may be confessed expressly, or by a pardon pleaded, or a demurrer. Therefore the *lex terræ* was put in to answer those cases, whereof the fact was stated by trial and confession; and the judgment of the fact, guilty or not, and of the law, whether judgment of death or not, are two things answered, 1. By *pares*, and, 2. *Legem terræ.* Sir William Jones, who took the conduct of this whole affair in the house upon himself, and was the chief dictator of the terrible votes against the Lords, upon that Monday on which the parliament was dissolved, entered upon his solemn argument, to show that the Commons had a right to bring a commoner to trial for his life by an impeachment in the House of Peers, and insisted that it was consistent with Magna Charta; for, although the peers' sentence is not *per pares*, yet it is *per legem terræ.* And, as that word was out of his mouth, the black rod knocked. This matter came not to the judges to give any opinion; and, if it had, they had a declinatory of course, viz. "that matters of parliament

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were too high for them." But, nevertheless, his lordship considered all points, and particularly what were moved in this case.

Arrival of Sir Dudley North.

In the time when the public was intrigued, and indeed tired with the blundering proceedings of Oates and his plot, his lordship had the great consolation of the arrival of his brother, Mr. Dudley North, who, having resided at Smyrna and Constantinople, above twenty years, as factor and merchant in the way of the Turkey trade, and had got a fair estate, returned to England to enjoy it. I shall not characterize this gentleman, nor enlarge much concerning his great dealings abroad and at home, having referred all those matters to the account of his life. But the most remarkable observation of this mercantile spark was, that he came with such an idolatrous respect for Oates and his plot, as if he had been truly, what Oates blasphemously arrogated to himself, the saviour of the nation. This was instilled into him by the merchants of the Turkey Company in England; who, being generally factious, in the flame of the plot, had sent accounts abroad which created such enorm imaginations in the factors. But when, by a long converse with his lordship, (for a little time would not do) the mystery of iniquity was unveiled, and the merchant saw that his idol was such a heap of nastiness, he wondered sufficiently at the stupidity, or

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knavery of his correspondents here. There was little or no intercourse, by letters, between his lordship and him in Turkey, for divers years before he arrived. Both had so much business, of other kinds, that they had left off writing long letters to each other, as formerly they had done. However, it had not been safe to have committed to a written despatch, such freedoms about the plot, as was needful to do right to it; nor was it thought material, at that distance, to transmit such nice and amusing intelligences. But the factious party made it religion to propagate the faith of the plot, all the world over, as far as they could carry it by their correspondences. All which was agreeable to proceedings here; for the impudence, as well as shame, of so great a falsity, was screened by public authority and violence; under the cover of which, the belief of it was obtruded, and all open contradiction suppressed. And, from this instance, let it be observed that, "where force and violence usurps the office of sound testimony, and deprives men of the liberty of judging, falsity and wickedness lies at the bottom."

Discourses of trade.

These brothers lived in this manner with extreme satisfaction in each other's society; for both had the skill and knowledge of the world, as to all affairs relating to their several professions, in perfection; and each was an Indies to the other,

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producing always the richest novelties, of which the best understandings are greedy. And it must be thought, trade and traffic in the world at large, as well as in particular countries, and more especially relating to England, was often the subject. And Mr. Dudley North, besides what must be gathered from the practice of his life, had a speculative, extended idea; and withal, a faculty of expressing himself, however without show of art, or formality of words, so clear and convincingly, and all in a style of ordinary conversation, witty and free, that his lordship became almost intoxicated with his discourses. And these new notions did so possess his thoughts, and continually assume shapes and forms in his mind, that he could not be easy till he had laid them aside, as it were, upon paper, to which he might recur, when occasion was, to reconsider, or apply them. And if, at the council-table, trials of issues, or, by probable relation, any thing touching the public, occurred (which he would not lose, and yet not have the burthen of it lie a charge upon his memory) if not upon the spot, yet, when he came to his closet, he disposed it.

Trade, like the sea, universal.

But here, having mentioned some new lights struck about trade, more than were common, it may be thought a jejune discourse, if I should pass on without giving some specimens of them: therefore I add a note, or two, that I could not

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but observe.* One is, that trade is not distributed, as government, by nations and kingdoms; but is one throughout the whole world; as the main sea, which cannot be emptied, or replenished, in one part, but the whole, more or less, will be affected. So when a nation thinks, by rescinding the trade of any other country, which was the case of our prohibiting all commerce with France, they do not lop off that country, but so much of their trade of the whole world as what that, which was prohibited, bore in proportion with all the rest; and so it recoiled a dead loss of so much general trade upon them. And as to the pretending a loss by any commerce, the merchant chooses in some respects to lose, if by that he acquires an accommodation of a profitable trade in other respects. As when they send silk home from Turkey, by which they gain a great deal, because they have no other commodity wherewith to make returns. So, without trade into France, whereby the English may have effects in that kingdom, they could not so well drive the Italian, Spanish, and Holland trades, for want of remittances and returns that way.

Money cannot be long wanted, nor abound.

Another curiosity was concerning money; that no nation could want money; and they would not abound in it: which is meant of specie for the use

* See some further account of Sir Dudley North's opinions in his *Life, post.*

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of ordinary commerce and commutation by bargains. For if a people want money, they will give a price for it; and then merchants, for gain, bring it and lay it down before them. And it is so where money is not coined; as in Turkey, where the government coins only pence or halfpence, which they call parraws, for the use of the poor in their markets: And yet vast sums are paid and received in trade, and dispensed by the government; but all in foreign money, as dollars, chequeens, pieces of eight, and the like, which foreigners bring to them for profit. And, on the other side, money will not superabound; for who is it that hath great sums and doth not thrust it from them into trade, usury, purchases, or cashiers, where the melting-pot carries it off, if no use, to better profit, can be made of it. People may indeed be poor and want money, because they have not wherewithal to pay for it; which is not want of money, but want of wealth, or money's worth; for where the one is, the other will be supplied to content. Mr. Dudley North was surprised with the Lombard-street cash trade, and would not come into it a great while, and then not much. He was at great defiance with the clipped money, and made war upon it in all his public and private discourses; and laid the foundation of the reform that was afterwards made: though his project was spoiled by those that

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(without thanks to his memory) took it up and put it in execution. As will be related more at large in the said gentleman's life.

Detail of the rise and fall of Ignoramus, and other proceedings in the city, not given here, and why.

Not long after Sir Dudley North's arrival, he was called upon to serve the king in the office of sheriff of London and Middlesex, in order to rescue that city out of the wretched state it was brought into by a certain monster, that raged in the years 80, 81, 82, styled Ignoramus. Of which I shall give no farther account here, nor of the disputes about choosing sheriffs of London, because the whole proceeding is fully accounted for in the Examen.* I shall therefore insist more particularly upon some few passages only, which may tend to display his lordship's zeal and sincerity in serving his country and his master, and are not expressly mentioned in the Examen.

The king desires Sir Dudley North to accept.

When it was intimated at court that Mr. Dudley North was every way qualified for the office of a sheriff if he might, by means of his lordship, be prevailed upon to hold; the king very much approved of the person, but was very dubious whether his lordship, with his much caution and wisdom, would advise his brother to stand in a litigious post. His majesty knew, that, unless his lordship cordially undertook it, he might appear, to him, heartily to consent, and yet, like a tricking

* *Examen*, p. 113, *et seq.* By the "Monster Ignoramus," North alludes to the return of *Ignoramus* to bills for high treason presented against Lord Shaftesbury.

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courtier, under-hand insinuate to the merchant not to stand, and openly charge it on his brother's refusal; which would have colour enough. But yet he resolved to try: and, one day, he spoke to his chief justice, with a world of tenderness, and desired to know "if it would be too much to ask of his brother, Mr. Dudley North, to hold sheriff upon my lord mayor's drinking." His lordship answered that he was assured his brother was disposed to serve his majesty to the utmost of his capacity. But, as to this matter, he begged his majesty's leave to acquaint him with his pleasure; and then he would return to his majesty his brother's answer. So far this went well enough; and the king conceived great hopes that he had found his man.

His lordship's arguments to persuade his brother to hold.

Now came on the main pinch of the business; which was to make Sir Dudley North sensible of his interest in complying with the king. His lordship was clear of opinion that his brother should hold; for he knew well that nothing at all against law, or extraordinary, would be required of the sheriffs; and, as for matters of the law, they would be re-committed to the secondaries and under-sheriff; and, then, nothing rested on the sheriff but to hold his white staff, and make feasts. And, for matter of title, he thought there was more squeak than wool; for, whatever people thought was at the bottom, if a citizen be called

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upon an office by the government of the city, and obeys, where is the crime of that? but he knew also that my lord mayor was in the right, and that his proceeding would be justified. But then such a terrible fear was artificially raised up in the city, as if this service was the greatest hazard in the world; at least that a powerful band of faction was colleagued, right or wrong, to resent it, which would bring certainly trouble, and, probably, loss; and justice has seldom so much credit in England as to be relied on. All which, besides the fastidious forms, and expense of the year, had caused so many knowing and able citizens to decline the office, and made it not to be expected that his brother should be free from all those qualms; especially being so much a stranger, as he was, to English affairs, which tended to increase his diffidence of himself, and distrust of the matter. But his lordship knew withal that his understanding was such that, having full information of the state and circumstances of the business, and of all possible consequences, he would certainly determine according to the true reason of the case, whether to hold, or not. And, with this confidence, his lordship, with all the freedom of a bosom friend, entered into conversation with him. He put on no authority, and required no trust implicit to be reposed in him; nor did he advance the least show that he expected his com-

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pliance herein as any act of friendship towards him, or as if he made his own court at his brother's risk; but laid before him an opportunity that proffered itself, whereby he might make a fortune if he wanted it, and much enlarge what he had, besides great reputation to be gained, which would make him, all the days of his life, very considerable. He left the objecting part to himself, and took his rise accordingly to dissolve all the fallacious reasonings, that commonly passed in discourse, of the dependence.

Determines to hold, and the reasons.

He laid open the case of the lord mayor's right very clear and plain, against which, in common sense, there was no reply; for the noise made by faction against it was brutal, and raised up to serve the present turn only, and would vanish when that was past: besides, there was all the valuable part of the city for it. But the merchant did not much heed that, because he was satisfied that a private citizen was no judge; and what had he to do but, according to his oath of freedom, to obey? And, as for fining off, it was, in reality, as much a fault as serving. So that, if the magistrates called and enjoined him, he did not see how, with honour, he could come off one way or other; and, if it was a matter of great moment, he was as ready to hold as to fine off. But the point was what it would signify to him to bear a tedious formality, and spend two or three thousand

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pounds to purchase it. As to that, his lordship showed him that, if he served, the obligation was so transcendent in this conjuncture, even in his majesty's own sentiment of it, that there could be no employment, by commission from the crown, which would not fall to his share; for the court was a little like the city in that. They thought the service much greater than really it was. So terrible an apprehension had they of the fierceness of this faction, and the advantage they had over the court at that time. Every man that intends for employments, must serve in some sort or other, to show himself capable; and what opportunity could he expect should drop from heaven more propitious to his advancement than this? He could never expect another; nay, the refusing of this, when so fairly offered, was a positive demerit, which would disable any other pretension as might fall in his way. This office would fall to his share, early or late; and if it be with so fair a prospect, why not at any time? now, as well as hereafter? and, as for the charges, his lordship said, "Here, brother, take 1000*l.* to help make good your account; and if you never have opportunity, by pensions or employments, to reimburse you and me, I will lose my share: else I shall be content to receive this thousand pounds out of one half of your pensions when they come in; and, otherwise, not at all." A day or two's conversa-

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tion of this kind, wherein more was considered than I can represent, entirely reconciled the merchant to his office; and having taken a resolution upon clear reason, he set his mind at rest, and thought no more of the adventure or consequence, than he did in shipping a bale of cloth. And, afterwards, like a great vessel against the waves, he stemmed the rage of the town-talk that flew in his face wherever he came; as is already related in the Examen*, and will be more particularly expressed in the course of that gentleman's life.

Attended near Guildhall during the election of sheriffs.

His lordship was one of those persons whom the king appointed to be in the city, not far from Guildhall, when the sheriffs were to be chosen; and he stayed, during the election, at Sir George Jeffries' house; and Sir George himself, through his interest in the city, had no small share in the conduct of this affair. This was to the end that, if any incident required immediate advice, or if the spirits of the lord mayor should droop, which, in outward appearance, were but faint, there might be a ready recourse. So the factious side had the Lord Grey of Wark, and the whole Green-ribbon Council† (elsewhere characterized), and other sages of the party, all equally concerned in what was doing.

* *Examen*, p. 601, *et seq.*

† For an account of the Green-ribbon Club, see the *Examen*, p. 572.

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Some doubts which the Lord Mayor was in, resolved in a generous manner by his Lordship.

When parties of men are concerned against each other in civil broils, it is strange how fertile all things will be of moot points. After the old sheriffs had taken upon them to declare Papilion and Dubois duly chosen, many of the reasonable citizens thought my lord mayor's point in a worse state than before; for here was a new case started. "Here," said they, "are two sheriffs declared; so they are officers *de facto;* and how can you super-elect and set up anti-sheriffs to oust them before their title is tried?" Upon this difficult matter, the court adjourned again; and, in the interim, the lord mayor and aldermen were sent for, or went, to attend the king in council; and there they were told that the proceedings of the sheriffs at the common hall, after the adjournment, were not only utterly void and null, but the persons were guilty of an audacious riot and contempt of lawful authority; for which, by due course of law, they would be severely punished. But in the mean time it was his lordship's (the lord mayor's) duty, and his majesty's pleasure, that they should go back to the city, and summon the common hall, and make election of sheriffs, for the year ensuing, according to the ancient usages of the city; and this (by his majesty's order in council) they should have with them. The lord mayor had found a different sentiment of his case upon this alteration; and some had insinuated that these

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courtiers would thrust him forward, and be under no engagement themselves. So he was very full of doubts; and, while the Lord Chief Justice North was speaking to the matter, as he did with great clearness, and plain reasons given, was very attentive; for he had a great value and esteem of his lordship's knowledge and integrity. When his lordship had done, he crept down towards the end of the table where his lordship sat, and, with a summiss voice and aspect, "My lord," said he, "will your lordship be pleased to give me this under your hand?" Now the king, and all the board, eyed the man, to see what he went about, and, hearing what he said, they all thought he had put the dor, as they say, upon the chief justice, and expected some turn of his wit to fetch himself off; and divers thought to have some sport in seeing how woodenly he would excuse himself. But his lordship, showing an uncommon firmness of mind, cheated them all; for he answered, without any hesitation, "yes, and he should have it presently:" so his lordship took the pen and paper, that lay before him, and wrote to this effect, viz. "I am of opinion that it is in the lord mayor's power to call, adjourn, and dissolve the common hall at his pleasure; and that all acts done there, as of the common hall, during such adjournment, are mere nullities, and have no legal effect:" and to that set his name, and gave it him, all of his own

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hand-writing; and, after he had it, he came up to his place again. This passage pleased the king; for he was not used to such generous dealing in touchy matters among his counsellors.

His lordship, the chief conductor of this matter. Reasons for not being more particular.

I have here touched upon some passages only which might tend to demonstrate his lordship's sincerity and resolution in a clear cause, and wherein he was satisfied that the law was with him, because the whole proceeding is fully related in the Examen. It was of the last consequence to the crown at that time; for the question was, whether treason and sedition, in London and Middlesex, were criminal, or not.* And this in a time when it was believed, though not so soon evidentially discovered, that a rebellion was ready to break out, and the game was actually begun in Scotland, but happily quelled at Bothwel Bridge. Was it not a strange circumstance in such a conjuncture, that the traitors themselves should be the ministers of justice, to judge and condemn their fellows; against whom discoveries were already had; though the whole scheme was not yet brought forth as afterwards happened by the means of one Keiling?† Neither do I give here

* That is to say, the question was whether the court should have the power of influencing the juries of London and Middlesex to return verdicts in its favour. The text alludes to the bills for high treason against Shaftesbury. (See *Howell's State Trials*, vol. viii. p. 759.)

† The man who discovered the Rye-house plot.

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the chicaneries of law upon this point, because they may be found, as far as was thought necessary, in the Examen. And indeed they may not be thought worth remembering; and, as for themselves, I grant it; but, as they are the history of some men's impudence, they are not inconsiderable; for they show that men, in parties, will affirm any thing (however nonsensical it is) against each other; and, what is worse, when things are thus confidently affirmed by numbers, the people, and, of them, such as should know better, will think there is some reason in it. But, of all sorts, none so brassed, in this kind, as demure pretenders, who complain of popery and arbitrary power, and, of all men, are the most irreligious and unjust themselves. And such this faction was. His lordship was a sort of pilot in the conduct of this affair; and most of the acts turned upon his judgment and authority. There were others who blustered, and made a great noise; but none penetrated to the bottom of the matters in question, but himself. His lordship was so much concerned that a matter of this nature and consequence should be tossed upon men's tongues as it was, and scarcely any one either mentioned, or, indeed, knew the true distinction upon which it was turned, that, for setting people's thinking right, he drew up instructions for some of the employed writers, whereby to

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dress out a pamphlet, which he supposed would be done, author like, by casting the materials into some plausible form, and setting them off with quaint sentences as might invite people to read, who care not for a lawyer's notes of argument, as in a law case. But whosoever it was that undertook it, he published the notes *verbatim;* adding only a sort of prologue and an epilogue; which made his lordship very angry: and, from that time, he resolved to give out no more instructions, and not to undertake any thing he could not finish himself.

Of tumultuous petitions.

It is related in the Examen,* how busy the last Westminster parliament was about the Exclusion; and also how money matters stuck, though an actual war with France was loudly called for; and treaties abroad, touching peace, between the French and the confederates, viz. Spain, Germany, and the Dutch (whereof the king was mediator) were depending; so that the king had reason to make a long recess of that parliament, to the end that matters might digest, and come to some maturity, as was hoped, and intended to be laid before the House of Commons, in order to put them, if possible, into a better humour. But the faction, at that time, thought that future elections would prove, as at the present, propitious to

* *Examen*, p. 541. *et seq.*

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their hopes; and therefore, partly to make bad blood, and partly to force the king to let the parliament meet and sit, which, by divers prorogations, had been put off, and might be so again, they instituted a method of petitioning the king that the parliament might meet and sit. And it is scarce credible with what saucy impudence divers came to the king with petitions signed with numberless hands, and frightful hieroglyphics; but with ten persons only in company, so as not to offend against the statute about tumultuous petitions: all which was fully stopped by a proclamation which his lordship penned. This also, with the turns it had in the House of Commons, is inserted there; so shall pass it over, and insist only upon some few incidents, with regard to his lordship, which have not been so particularly set down there.

Divers trepans and snares laid on this account.

While the persecution of abhorrers, and questioning the proclamation in the next sessions of parliament, were talked of by the factious party in town, and terrible doings were expected, his lordship was passive, and appeared not to have any concern upon his spirits; but consulted his best friends, and, showing them the proclamation, asked if they could find any caption to be made upon it; and every one, even old parliament men, used to the trade, could find none. But his lordship nevertheless held himself under

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the guard of his caution, lest, when the enemy had none, he might administer weapons against himself; for he did expect, as it proved, that he should be surrounded with trepans. One was a grand one, and of a secretary of state, the Lord Sunderland. He, and the rest of his party at court, pretending to be fierce against the petitioners, thought to push on such as they would ruin, to act intemperately in that cause, and so to become exposed to the parliament: and, pursuant to this pious design, when he signified his majesty's pleasure to his lordship and Judge Jones, to suspend the execution of the laws against Protestant dissenters, he added that they should by all means discourage the petitioners, and encourage the anti-petitioners. But his lordship was aware of his trap, and, in the country, took thereof no manner of notice. Afterwards, when the proclamation was voted a ground for an impeachment, and made a great noise, but the committee, to draw articles, could make no work of it, his lordship's brother-in-law, Mr. Soams, in extreme haste, found out his lordship, and told him he came from the Earl of S. (I believe, Sunderland;) for he (Mr. Soams) having often urged that lord to find some means to abate this rigour, of the Commons, against his lordship, that morning the earl wished him immediately to find his lordship out, and to let him know "that a

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way was discovered for him to come off." And it was that he should go immediately (time would not stay) and, speaking to the Commons, "give up the proclamation as unlawful." That was a point they would certainly carry; it being against the right of petitioning, and privilege of parliament: and they had no enmity to his lordship, but regarded the matter; which set right, they would drop persons; but, if resisted, they would pursue, through all, with the rigour of impeachments: and this must be quick, quick; for, if they farther engaged themselves, it would be too late. His lordship could hold out no longer, but laughed in his friend's face. The gentleman thought him mad. "Why, brother," said his lordship, "do you not see through this tinsel device?" and then he unfolded to him the snare; which was, in short, that, if he went and sneaked in that manner, he should lose every friend he had in the house; and all would unanimously join to crush him: and that he should do so, was the design of this message. Somewhat like this happened in the House of Lords, where the Lord Lovelace, after much said of his relation, honour, and respect, asked his lordship why he did not go and speak to the Commons? "for," said he, "they are very angry with you." "Are they indeed so angry as your lordship says?" "Ay, by G—d are they, very angry!" His lordship answered

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that "he did not care to come near angry people." * So ended that dialogue. But these lords, not used to much contradiction, thought all men fools but themselves: for, if they had had any judgment, they must have known his lordship better, and not have ventured such flams at him, who could smell powder farther than they could see. But where is the sense of truth, to say nothing of honour, in the acts of such false friendship?

Difficult and hazardous defence in the House of Commons.

His lordship said often that this question, raised upon him in the House of Commons, was much easier in the defence, than the former about solicitation; for then he had a majority of the house, fully assembled, his friends, at least, not averse, or in party against him; so that the war was carried on by tricks and surprises, and needed watching and informing. And this puts me in mind of a merry conceit of his lordship's aunt, the Lady Dacres. She was acquainted with Mrs. Baker, the old Lord Anglesey's sister, who was a zealous presbyterian, and pretended to have a vast interest in that party. She told the Lady Dacres that she could fetch off her nephew (then upon the ten-

* In the *Examen*, p. 548, North has described in a lively manner the anger of the petitioners. "I remember well in Trinity term, as the weather was hot, the party men flamed. We could observe, as they passed to and fro, fury in their countenances; and we could not avoid hearing the stately sounds of, '*God d—n all these abhorrers! Plague take all these abhorrers!*' and the like."

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ters) when she pleased, by making all the Presbyterians in the house for him. Upon this, the Lady Dacres sent for her nephew to come to her, as he did, and told him what Mrs. Baker could do for him. His lordship answered, that he should be thankful for any acts of friendship in that kind. "But i' faith, nephew," said she, "there must be money." To which his lordship replied, "that he would not give one brass farthing to buy all the Presbyterians in England;" and so ended that scheme. But to return to the case of the proclamation. Elections had been so varied that he could not pretend to have half the members indifferent to him. The rest were all in the confederacy against him; and it was to no purpose, or, rather, to ill purpose, to apply to any of them. Those who were his friends (by that I mean the court party) were sure to be for him, and the rest as sure against him, in every question that should be put to injure him. And some of the old stagers of his party, told him plainly, he might take his ease and sit still; for his friends, out of the house, by soliciting, could do him no service. The matter was very well understood; and they within, that stood together, would be vigilant as to surprises, and act for his indemnity, as occasion should serve.

Humanity of his lordship, to-

I cannot omit here the doing right to his lordship's memory, in showing a piece of humanity that

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wards Sir Creswell Levinz.

few persons but his lordship, in his circumstances, would have done. And that respected Sir Creswell Levinz, the attorney-general, who named his lordship in the House of Commons*. For although his lordship knew, that the party intended to work through him, yet he never conferred with, or so much as spoke to him, concerning his behaviour, when he should be called to answer in the House of Commons: for nothing could be advised, in his case, but to act the brave, and to own and justify his proclamation to contain nothing against law, or to have refused to name his assistants when the act was his own; either of which might have sent him to the Tower; which had interested the king in his case, who would have protected him; and, perhaps, they might not have ventured to send such a capital officer to the Tower, but impeached him in manner as they proceeded against his assistant; which would have gained his Majesty's ultimate favour, and been, on that account, his

* As the author of the Proclamation against tumultuous petitions, (see the *Examen*, p. 551, 554, and *Cobbett's Parl. Hist.* vol. iv. p. 1229.) "His genius," says North, when speaking of Levinz, "was not above a pleader, and in self-concerns wonderfully cautelous." He was one of the counsel for the seven bishops, one of whom, Baptist Levinz, Bishop of Sodor and Man, was his brother. On the Revolution, he was appointed by the Convention, with others, to direct that assembly in matters of law. *Ob.* January 29, 1709. (*Noble's Granger*, vol. i. p. 167.)

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wisest course. But his lordship knew him to be a mere lawyer, and a timidous man, and accordingly left him to himself. And his lordship did not in the least resent the naming him (so degenerously) as he did, but ever after held fair with him as before, and gave him common assistances and countenance, as if no such proceeding had been. Which, as I said, was a species of humanity seldom practised in the world.

Of the rebellion in Scotland, and an impudent assertion of the faction, about quelling it.

But still although the matter of the proclamation came to nothing, the sky was black, and good men were not at ease while this parliament sat. They flew so fiercely at the abhorrers, and at the succession, and under that, as some thought, at the crown itself, that none could foresee what might happen. The king offered divers expedients and qualifications of power in the successor, which were (most wonderfully) refused; which some thought was only because they did not affect the possession. But what the king might, by importunity and inconvenience, be drawn to yield to for the mischief of the nation, no person knew, or, by any foresight, was secure of. The Lord Shaftesbury headed the faction, and made an incentive speech in the House of Lords, of which numerous copies were sent the same night, by the post, to Edinburgh. And thereupon the rebellion broke out; of which a full account is to be found in the Examen. The same faction started a

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question about the lawfulness of sending forces into Scotland to quell that rebellion, and whether it was not against the articles of the union, in the reign of King James I. as is more largely showed in the said Examen.* His lordship was of opinion there was no ground for the scruple at all; and, afterwards, set it down among some other positions, which he titled "Impudent Assertions of the Faction." But, however, that did not satisfy some counsellors (for the late regulation, or reform, as it was called, was then in being), and that quære had got abroad among the officers. Thereupon the king, to proceed formally, ordered Sir William Jones, his attorney-general, to consider the treaty and the present circumstances, and give his judgment, whether forces might be sent or not? and he returned that they might; for forces, sent in aid, and at the desire of the government in Scotland, could not be construed a hostile invasion in the sense of that article. And thereupon the council came to a conclusion, and the commissions were ordered. For the court of England was now so steadily determined to act, in all things, according to law, that the faction could find no way to annoy them but by corrupting the law itself; and what they, forsooth, would have to be law, must be so, and nothing

* Page 80.

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else: although, at the same time, when thus they strained at gnats, they swallowed whole camels, and consequently fully demonstrated the same. It is pity honest men should be so mealy-mouthed and scrupulous, as they are apt to be, when, upon the stability of the government, their all is at stake. So, in the time of the rebellion of forty-one, when, in the Midland counties, the rebels raged in arms, and acted downright hostilities against the crown, the honest gentlemen in other parts of the kingdom, viz. towards the West, were sneakingly disputing whether the king's array were lawful, or not.

Duke of Lauderdale's friendship, and dissolution of the parliament hinted.

His lordship had, at this time, few friends in court; but, next to the king, who was always sure to him, the Duke of Lauderdale was in his perfect amity.* The duchess, when she was Countess of Dysart, lived at Fakenham in Suffolk, near to Tostock, where his father lived; and the lady resided there for the sake of bringing up her children at Bury school; and, as in such cases is

* The friendship of the Duke of Lauderdale was little creditable to the Lord Keeper. The ground of their attachment was certainly not, as in some other of the Lord Keeper's friendships, a mutual love of music. "Strange to hear," says Pepys, "my Lord Lauderdale says that he had rather hear a cat mew, than the best music in the world, and the better the music the more sick it makes him." (*Diary*, vol. i. p. 434.)

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usual, his lordship's brothers and her sons, at breakings-up, were playfellows. This acquaintance made no great advance; but the lady, being a politician professed, and afterwards married to the Duke of Lauderdale, after his lordship became considerable at court, called upon his acquaintance, and brought her husband to be a familiar friend, who, before, had but valued him for his abilities, and service to the crown. And his lordship's brother, Mr. John North, for general learning eminent, was also taken into the duke's confidence and friendship; and the duke himself, being also learned, having a choice library, took great pleasure in Mr. North's company, and in hearing him talk of languages and criticism. And these brothers were not seldom entertained at the great house at Ham,* and had the freedom of the gardens and library. This great man was a solemn consolation to his lordship, because he could open his mind freely to him, and rely upon his sincerity. I must never forget one passage, which happened at dinner at Ham. I have mentioned how his lordship was touched in the last West-

* Evelyn tells us, that it was "inferior to few of the best villas in Italy itself; the house furnished like a great prince's; the parterres, flower gardens, orangeries, groves, avenues, courts, statues, perspectives, fountains, aviaries, and all this at the banks of the sweetest river in the world." (*Memoirs*, vol. i. p. 470.) The Cabal held their meetings at this house.

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minster parliament, but the duke much more fiercely; for he kept the Scotch gates fast, so that rebellion could not enter on that side; which distressed the factious party in the highest degree, and drew upon the duke more than one or two addresses to part him from the king; but the king would on no account part with him. So that both these counsellors were as blown deer, and would be glad to have the parliament dissolved; of which, to say truth, the whole nation was weary. And, at this time, the frost was very sharp, and the company at dinner complained of cold. The duke turned, and, looking back towards the window, said, "there will be a thaw soon." None at the table, but his lordship, guessed at his meaning. And so he intended it; for he knew that the parliament would, in a few days, be dissolved; but his lordship did not, till he guessed so from that sentence of the duke's; and it proved accordingly. And so the duke discovered, and, at the same time, kept the grand secret, which was a true turn of a politician.

The death of Dr. North.

About this time, a fatal stroke happened to his lordship, viz. the loss of Dr. North, master of Trinity College in Cambridge, his dear brother and familiar friend. I call it loss; but it was much worse, for he was maimed by an apoplexy, and disabled both in body and mind, which, more

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or less, is always the effect of that disease: but when it is in a high degree, as his was, the case is most deplorable. It proved that which they call an hemiplegia, which rescinded the chief use of one leg and one arm, and distorted his countenance, corrupted his speech, and, what was more than ordinary, cast him into convulsion fits, which returned, for the most part, monthly, and not only tormented, but dispirited him, and made the little life he had left, a grievance to him. His friends would willingly have followed him to his grave, unless they might have seen him restored to a tolerable health, and to become that bright and witty, as well as learned and accomplished divine, as he was before. But they were forced, present or absent, to sympathise in his sorrows; for, between four and five years that he lived in this mortified state, he came to a full understanding of his condition; which made it worse, as appeared by divers pathetic letters he wrote from his college in Cambridge. I do not enlarge here upon the circumstances of this good divine's life and death, because I have a small volume express on that subject. Therefore shall only add here, that his lordship was made the doctor's sole executor, whereby he came into an excellent library, especially of Greek books, which the good doctor left, and also a personal estate of about 4000*l.*

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one fourth of which, by direction of the doctor's last will, was given to poor people.

Note of the times when his lordship was taken into the privy council.

I have already taken notice of his lordship's being made a privy counsellor, and of the company that came in with him, who were the stiffest opposers of the court in parliament. For the Earl of Shaftesbury was made lord president, the Lord Sunderland secretary of state; the Earl of Essex,* Lord Russell, Henry Powell,† and some others of the malcontent party, were taken in. But this, being one of the chief incidents in his lordship's life, may require a fair account to be given of it.‡

* The Treasury was put into commission, at the head of which Lord Essex was placed. Of this nobleman, Evelyn has left the following character:—"He is a sober, wise, judicious, and pondering person, not illiterate beyond the rate of most noblemen in this age, very well versed in English history and affairs, industrious, frugal, methodical, and in every way accomplished." (*Memoirs*, vol. i. p. 487.) See also his character drawn by Lord John Russell. (*Life of Lord Russell*, p. 105.)

† Sometimes spelt Powle, a distinguished member of the Whig party. He is said by Burnet to have been "very learned in precedents and parliament journals, and, when he had time to prepare himself, a clear and strong speaker." (*Own Time*, vol. ii. p. 668.) Like some others of his party, he maintained a correspondence with Barillon, the French ambassador, who calls him "a man fit to fill one of the first posts in England—very eloquent and very able." (*Dalrymple's Appendix*, p. 261.)

‡ On this change in the administration, Sir William Jones

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The long parliament, as to all use to the crown, was grown effete, or rather unsafe; for the court party were become a minority; and the faction, in hopes of a better, did all they could to get it dissolved, which gave rise to all that noise and stir as was made about pensions. Nothing that the king desired, could prevail: but, on the other side, plots, and exclusion of the successor, were exaggerated, to his great disquiet: and, after this parliament was dissolved, another was chosen, called the Little Westminster Parliament, which, proceeding upon the battered topics of plots, exclusion, popery, and the French, were averse enough to the king's affairs; but yet not so bad as some would have had it; for no Popery, no Presbytery, was heard sounding in the House of Commons, which those of the anti-court party did not like, because it showed a disposition, upon fair opportunity, to piece with the crown. Those persons, therefore, who had influence at court, and favoured the faction, never left till they got this little parliament dissolved, as is more particularly

had the new-modelling of the bench. "No part of the change," says Burnet, "was more acceptable than that of the judges." (*Own Time*, vol. ii. p. 790.) The new ministry was formed under the auspices of Sir William Temple. North has elsewhere given an account of it in his usual style. (*Examen*, p. 75.)

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showed in the Examen,* for it was presumed that, as the public was seasoned, every election would be more and more averse: and so it proved; for the next parliament flew against the court with more rancour and fierceness than any other had done. The king, hoping to gain a better humour, had done some considerable things, as sending away the Duke of York, offering expedients, and, with others, reforming the privy council: for, having dissolved the old one, he made a new appointment, and (as I said) took in the chief leaders of the faction in both houses, that it might not be said he wanted good counsellors. But, that he might not be left alone with them, he joined some that were, as he knew well, assuredly his friends, among whom his lordship had the honour to be one. In the course of these troublesome times, the loyalists were never secure in their own minds, that the king would stand the siege which had environed him, but, at length, he must be brought (as the faction thought and verily expected) to surrender at discretion; and then they should lie at the mercy of the king's, and their own, implacable enemies. And this pass of reforming the council, in that manner, seemed an overture of it, as may be found parti-

* Page 503.

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cularized in the Examen. But his lordship, in a short time, could, by his majesty's behaviour amongst them, discern his firm purpose not to quit the reins, nor to let go the magistracy into the hands of his enemies, as was designed he should: and then his majesty's friends were at ease, and took heart a grace to act vigorously against the seditious practices of the faction; and the nation, in general, were satisfied that the king had done enough. And, from that time, the state of his authority was redintegrated; as the relations of those times, if any good ones appear, will at large demonstrate. As for his lordship's being taken into the cabinet, it was but a token of a more entire confidence in his fidelity and judgment; and that he might be assistant, not only in the formal proceedings of the privy council, but also in the most retired consultations of his majesty's government.

Reasons for dissolving, and of the king's declaration.

After the king was returned from the Oxford parliament, the court was at leisure to look about them. For though the faction had a great shake, yet it was not fallen; for Ignoramus was still on foot, and the sound of mischief hatching, was heard by certain buzzings about plots. His lordship therefore thought fit to advise, or, at least, to concur in advice to, his majesty, to publish his royal declaration to his people, of the causes that moved him to dissolve the two last parliaments,

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of Westminster and Oxford; which was done, and published. And though it was tart enough upon those parliaments, which one would not think, whatever the cause was, should be very popular, yet, on the contrary, it took so with the sense of the people, that the fancy of addressing went on (as was hinted) in a surprising manner. The declaration was penned, or adjusted, with all the prudent cautions imaginable; and by his lordship himself, as I verily believe, and do think that, by the style, it is demonstrable.* His lordship was then, and had been some time before, of the cabinet council, and was the chief director in those importune pretences to plots and discoveries, that grew very troublesome till that of the Rye. But he had the satisfaction of having the king, for the most part, present at the examinations, and also opportunity to insinuate matters of law, and cautions, to his majesty, that knaves, by coming into his presence alone, might not have a possibility to forge colours to betray, or to defame him. For that design was still driven, that he might be thought a false suborner, and confounder of Protestants.

His lordship, in this work, had an especial as-

* To this declaration a spirited answer was written by Somers, and corrected by Sir William Jones. Sidney is said to have made the first sketch of it. (See *Burnet's Own Time*, p. 868. *Examen*, p. 508.)

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Examination of false plots.

sistant of the secretary, Sir Leoline Jenkins, a person of great worth, learning (in the civil law) and fidelity. His lordship had no small occasion for the help of such an extraordinary person, when he had so much upon his hands, in the examinations of the sham plots of Dangerfield, and the rest of those impostors, that wrought between the plot of Oates, and the discovery of Keiling, and held his lordship in continual stretch of penetration and caution, that the king might be apprised of his danger in letting such cattle, as the pretended discoverers were, come into his presence, which they always pressed for; and the king, who loved to judge for himself, was too much inclined to give way to, and even, sometimes, alone, which might have been of the last consequence to him. But the referring these *fourbes* to the secretary's office to be examined, always frustrated their designs; and not only his lordship, but the king himself, ordinarily attended at the examinations; which let him into the secret of plot knavery, to his no little edification. And however his majesty's enemies, abroad, defamed him, a true account of these matters, which is to be found in the Examen, will show that he inquisited with justice and decorum, and determined with as much lenity towards his enemies, as ever prince did. And to prick in here one memorial of that good king's

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understanding, as well as equity, I heard his lordship say that, in matters heard at the council-table, he never knew him determine otherwise than was right. But, to shake off all these illusive discoveries, the only stain they left was a loathing of all manner of plots; and it nauseated the ministers to hear of any new discovery: whereby any that proffered, came on against all the prejudice and suspicion that might be.

Prudent administration.

In the interval between the arrest of the lord mayor and June 1683, all was, in appearance, hush; and the ordinary proceedings of state went on orderly and well; and his lordship was in very good company at court. For the Earls of Halifax and Rochester, and Secretary Jenkins and his lordship consorted together to fit business for his majesty's cognizance and determination; and very often met over night at the secretary's, for like purposes, that they might not be surprised, and hazard the not understanding each other the next day: and all meaning truly the king's service, they were in most things unanimous; and, to hold that firm, his lordship perpetually inculcated the adhering entirely to the law, and to do nothing which might give handles to ill people to pretend the contrary. They had power enough, that way, to make examples of those that were caught offending; and, if some escaped, it were better than to strain points to crush them. And they

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had often discourses of recommending men to places of trust; and therein his lordship and the Earl of Rochester, as to a standing rule, differed. The latter was for preferring loyalists, which were such as ran about drinking and huzzaing, as deserving men, and to encourage the king's friends. His lordship was for bringing men forward in offices that had dealt long, and were forwardest in them, as most likely to understand the business, rather than the most willing friends that understood nothing. But, in this method of administration, the king's affairs went on to the satisfaction of all (honest) people; and the chief virtue of it was owing to his lordship, who would not forsake the law upon any account. But these ministers of state little thought of a pestiferous cloud that hung over their heads, and was to have broke full upon them the March following; when an infernal combination of men were to have attacked the king's coach, as he returned from Newmarket.

How Keiling made the discovery of the Rye-plot.

Keiling, one of the assistants at the arrest of the lord mayor, a secretary, and deluded by a faction, otherwise a good liver, and honest at the bottom,* made the first discovery of this horrid

* He is described by Burnet (*Own Time*, vol. ii. p. 940), as "an Anabaptist in London, who was sinking in his business, and began to think that of a witness would be the better trade."

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design. Whether pure conscience, or detestation of the mischiefs he knew were to be perpetrated, moved him, I know not; but it is certain that no combination, temptation, or prospect of reward drew him forth. He first made means, by the Lord Dartmouth, then belonging to the Tower, to be brought to the secretary's, and there, in a plain manner, declared the whole. His lordship was at the examination; and, when he came home at night, he told us that a discovery had been made of a most horrid plot against the king and duke; but he could not tell what to say to it yet: for the court had been so fatigued with searching into false plots, that they came to an examination of a true one, as bears to the stake; and, as to crediting, were very nice and scrupulous. They scarce believed Keiling, who was but a single witness. But he, either out of zeal to prevent so much mischief as he saw coming on, or lest, if he were seen at the secretary's office by any of the conspirators, it might cost him his life, went away, and next day came again, and brought his brother with him, who confirmed what Keiling had discovered, and fully convinced the lords that he spoke true. Then warrants issued, and proceedings were had: and when his lordship came home that very night, he told us that he believed the discovery was true. But, as persons were taken up, and confessed, the evi-

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dence was yet more full and incontestable; as is particularized in the Examen.* And the part his lordship acted in the discovery, is already related.

His lordship's abilities and interest.

Now, as concerning the state of his lordship's interest, it was most notorious that, by eminent services performed, through all the troubles of the court, and now finally in contributing so largely, as he did, towards clearing up all these brigues and embroils of the city, and all clear and hearty, and as done cordially, and *ex animo*, and not after the adulatory manner of a court, he was now so confirmed in the king's good opinion, not only for his knowledge in the law, and all abilities, but also for his sincere good will to do him service, that no art or industry of any person, or party, or interest in England (although great endeavours, and of strong parties, were used), could make the least impression on the king's mind to his prejudice. Once, at a couchee, a courtier was pleased to say that his lordship was no lawyer. The king, over-hearing, looked sourly over his shoulder, and said that, "whoever said so, did not know the Lord Chief Justice North." And although, at court, there are always a sort of underminers, who would, if they durst, have been nibbling at him,

* Page 378. *et seq.* For a full history of the Rye-house plot, see *Howell's State Trials*, vol. ix. p. 357; *Life of James II.*, vol. i. p. 738.

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they never could, in that king's reign, gain the least glimpse of encouragement that way. I might have mentioned in a more proper place, a passage which must not be forgot, which happened sitting the Westminster parliament; when his lordship was, at that time, said to be impeached for the proclamation against the petitioners. Whilst he was sitting upon the woolsack (as the king thought) pensive, his majesty came and clapped himself down close by him, and, "My lord," said he, "be of good comfort; I will never forsake my friends, as my father did;" and rose up, and went away, without saying a word more. And this encouragement was welcome, and gratefully accepted. At length Sir George Jeffries was made chief justice of the King's Bench, and took upon him the conduct of that great work; I mean of working counter to his lordship; as will appear in the next stage of his life.

Trial (as it was said) of the Lord Chief Justice North.

Before I lift his lordship up into his next and last stage, I shall remember an incident or two, that fell out in the Common Pleas, before he left the cushion there. One was a trial at the bar, which, in Westminster-hall, was called "the trial of the Lord Chief Justice North;" which drew abundance of auditors, more than used to be at such trials. The fancy was, that one of the parties was the father of Mr. Robert Foley, his lordship's brother-in-law; and many concluded

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that he would discover a partiality in it. The bench always carried themselves fair, and without any affected opposition to his lordship; except Judge Atkins, who took all opportunities to cross him, and thought to have done it sufficiently in this trial. The cause was of a bill of 800*l.* whether satisfied in accounts or not; if not, it was with Foley; otherwise, with one Sands the defendant. The matter was very intricate; and his lordship conducted the trial with exact order, and full latitude to the counsel. He sifted all the evidences with his usual sagacity and judgment; and no one could perceive any tendency of opinion, one way or other, till he came to sum up the evidence, and direct the jury. And then he recapitulated the evidence, and gave to every article and circumstance its full force; and, showing how the balance fell, concluded that the weight was on the plaintiff's side, for whom he thought they had reason to find. The two next judges the same. But Atkins thought to direct as clearly on the other side, and began most furiously that way; but, in the middle of his talk, found himself in a wilderness, and that he could not carry it through; and thereupon, in a most surprising manner, shifted his sails, and fell into the same strain as the other judges had discoursed, and concluded for the plaintiff; and so, the court being unanimous, the verdict went ac-

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cordingly. And this was such a turn in speaking as I never observed, before or since, to be made by a judge on the bench.

Opposition made to his lordship, by Judge Atkins, about a prothonotary's place.

This Judge Atkins made an open opposition to his lordship, about the disposal of a prothonotary's place, which is known to belong to the chief justice. But he thought fit to stir up his brethren to put in for a share; and there were some words and altercation passed in court about it. His lordship told his brother Atkins, "that he should know here was no republic;" and the other answered, "no, nor monarchy."* But the new officer was at last sworn. His lordship hath left a note of these bickerings from his own pen; which I think, for full intelligence of the matter, to subjoin in his lordship's own words.

His lordship's account.

"1680. In the last vacation, Mr. Townshend, "the second prothonotary of this court, surren- "dered into the hands of the *custos brevium;* and "the *custos brevium* presented to me Thomas "Winford (who had formerly been philazer of "Surrey, &c. and surrendered that office into my

* Sir Robert Atkyns was a justice of the Common Pleas in 1672, and displaced in 1679, on account, as it is supposed, of his connexion with Lord Russell and the Whigs, to which the chief justice alludes in the text. After the Revolution he was made chief baron of the Exchequer. His constitutional writings are well known and highly appreciated. See Mr. Hargrave's remarks upon them. (*Preface to Hale's Jurisdiction of the Lords,* p. 189.)

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" hands) and desired me to admit him. Where-
" upon I did administer to him the oaths of alle-
" giance and supremacy, and the oath of his office.
" And this was done by the preparation and ad-
" vice both of the *custos brevium*, and Mr. Robin-
" son, the chief prothonotary. But being about to
" put him in corporal possession of his office, the
" other judges alleged they ought to allow him;
" for his admission was an act of the court, being
" done in court. I insisted upon it that it was in-
" cident to my office, and, in that right, I put him
" into possession. I undertook to satisfy them of
" it the next day. And, accordingly, I showed
" them the case in Moyle's entries, fol. 3. Trin.
" 12 Edw. IV. rot. 494. and pasch. 3 Car. rot. 42.
" and all late entries, which expressly say it is
" done by the chief justice, in right of his office:
" nothing being mentioned of the consent of his
" companions, or of the act of the court. Dyer,
" 150, saith that the chief justice '*contulit offi-*
" *cium capitalis prothonotarii contra voluntatem*
" *aliorum justiciariorum qui judicabant alium esse*
" *magis idoneum.*' This shows that, if he, who
" gives an office, finds one that is *idoneus*, it is suf-
" cient, although another man may be more fit.
" That, to remove an officer, it must be the act
" of the court; and therefore D. 115. a. said that
" a discharge was '*ex assensu sociorum suorum.*'
" That I thought he might be sworn in my cham-

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" ber, as Mr. Wirley was, who was never sworn
" in court; and necessity speaks when the office
" becomes void in vacation time. Nevertheless
" I did not oppose; but he should, for solemnity,
" take his oaths in court, as Mr. Robinson did,
" after he had been privately sworn. Whereupon,
" my brothers insisting no farther, he was sworn in
" court, and I put him in possession, and put on
" his cap, and declared I did it in my own right,
" and not as an act of the court; which was in
" no ways contradicted; and I ordered Mr. Ro-
" binson to make his entry as in former times,
" which did fully explain it."

Sat as Speaker of the House of Lords.

But, in this confirmed state of credit with the king, it cannot appear strange that, during the infirmities of the Lord Chancellor Nottingham, his lordship, in a sense almost universal, was his presumed successor, as if he had been previously declared so. For, while his lordship was chief justice of the Common Pleas, he often was constrained to take the place of speaker, and preside in the House of Lords in the room of my Lord Nottingham, the chancellor, who, towards the latter end of his time, was much afflicted with the gout, and, in other respects, very valetudinary. I have known him sit to hear petitions in great pain, and say that his servants had let him out, though he was fitter for his chamber. It was the care of the king's ministers to have always a com-

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mission dormant in the house for appointing a speaker in the absence of the chancellor; else, the lords, coming to sit, and finding none to take the woolsack, would be apt to choose of themselves; which was a precedent the court did not care should be made. By these vicarial offices in the house, his lordship was educated to the employ there, when it should fall to his share in chief. Having therefore brought his lordship to the *ne plus ultra* of all that his profession of the law could, by any means, entitle him to, we rest him here, and, after some few reflections upon his conduct and character, take the rise of a new posture of his employments; which is the fourth and last stage, as I have designed, to distinguish in the course of his life, and which I have presumed to entitle his ministry: and, for that station of authority, if knowledge be an apt qualification, he was a non-pareil; for, next to Machiavel, none ever understood human nature better. He had noted down, one would think, all the disguises and false pretences that ill men use, and, not only all the common frauds of men, but also the great cheats of the court, and officers of the revenue. All which are brought together, and put with some matters historical and political; which, if required, may speak for themselves, and prove that what I say is neither hyperbolical nor partial.

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But this distinction of his lordship's ministry is not designed to exclude the former time, that is, after he was called to the privy council, and then to the cabinet, which happened before he had the great seal committed to him; for then also he was really a minister of state, and was so looked upon, and respected at court. And this brings into my mind some pleasantries of his lordship upon that subject. Once, in a good humour, and laughing at himself, he told us that he found, by two infallible tokens, he was thought to have a considerable interest at Whitehall. One was, the respect paid him by the foreign ambassadors; and the other was, the Lord Craven's whispering. As for the first, he observed that, in the rooms at Whitehall, whenever any of the ambassadors looked towards him, and thought he perceived it, they very formally bowed: and for the other, that is the Lord Craven, he was an old soldier of the German discipline, and, being also an old Cavalier, had a chief command in the guards.* Among other of his foibles, which were not a few, one was to seem intimate with rising men, and that by

His lordship how respected at court.

* This gallant old lord was in command of the Guards at Whitehall, when the Prince of Orange's Dutch troops were ordered to mount guard at that palace; "when the stout Earl of Craven resolved rather to be cut to pieces than to resign his post." The King, however, interfered to prevent the bloodshed. (See the Duke of Buckingham's Account of the Revolution, in his *Works*, 4th edit.)

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most fastidious whispering of politics in their ear. This inconvenience had found his lordship out; and when he was put past his patience, and escaped to his friends, he used to call him an earwig. To conclude this with a merry story. The king, seeing the Lord Dorset, a prime wit of the time, standing seriously under the infliction of the Lord Craven's whispering for a considerable time together, after they were parted, asked him very gravely, "What it was that my Lord Craven said to him?" He answered, as gravely, "That my lord was pleased to whisper, but he did not think it manners to hearken."

Carried himself steadily, as judge and privy counsellor.

But to proceed, as I hinted, to somewhat of character, such as might be observable in this stage of his lordship's life. Now, in the *height of his* reputation, he knew well that the two grand parties, Papist and Fanatic, were always urging their several projects at court; and, if either got ground, it would be to his disadvantage; the former to remove, and the other to ruin him. And he considered also that no stability at court will continue long, but novelties will, more or less, obtrude. These considerations filled him with thought; the rather because he could discern a rising emulation, under him, of such as, if they could not wound, laboured to defame him; whereof I shall have enough to say afterwards. These matters made him carry himself steadily in the king's service,

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not only as judge, but counsellor; and in such manner as, living and dying, whatever happened, he should have his justification (in his own mind at least) full and complete.

Coerced all passion, though inclined to it.

The family, of which his lordship was descended, in almost all the branches of it, was most susceptible of passion. But his lordship was esteemed free from that weakness, being, in all his judiciary course, a most patient hearer, and scarce ever perceived to fall under the impotence and indiscretion, either in speech or behaviour, which angry men are obnoxious to. He used to argue men into good order, rather than chide. He was not easy under impertinence; but gave way to it, if it came in the regular course of practice; but, when out of order, he less endured it. And when men were pervicacious before him, and would not acquiesce in his reasons, his way was to sting with a pointed word or two; but never lost himself so as to vilify and revile over and over again, or discover any distemper in his mind. And, for all this, I know he was, at the bottom, as much inclined to passion, as any one of his race ever was; but his judgment showed him the vanity, or rather mischiefs, of such disorders; and his reason, and the force of his resolutions, enabled him, on all occasions, to contain himself, and to curb the very first risings of passion; and that in such a degree, that he was taken almost for an insensible; and some of the cour-

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tiers fancied that he was a man that any thing might be put upon. It frequently happened that his lordship, being provoked, would warm, as I could discern by the air of his countenance; but few, less acquainted with him, could perceive any thing of it; and he was the more silent, as he discerned any such emportment in himself; and accordingly affected a temper, and forebore to say many things he should have uttered, if he had not discerned the rising. Sometimes ill people, especially of the Fanatics, would importune him in a manner that made him believe they did it on purpose to divide him from his temper, and, by some imprudent behaviour or speeches, expose himself: for they, who were offenders, and must abide the correction of the law, desired that the judge would show an inordinate passion, that it might be thought they suffered under his displeasure, rather than as breakers of the law. In these cases, which were very frequent before him, he used to be as tame as a lamb; but failed not to pronounce critically the law, with manifest reasoning, which disappointed them every way. And surely, if ever there was a workman at curbing all efforts of passion, it was he: and those, in whose way he stood, and were called the Fanatic party, had an inveterate desire, if by any means they could, to get rid of him; for he was one against whom no snares had any success, and no advantage could be gained.

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If he had been a dissolute, ranting man, as some were, or a weak, imposable wretch, they had liked him much better. In a word: of one, by nature, passionate, use had made him habitually mild and temperate.

Passion a symptom of truth.

His lordship was bred *in foro contentioso*, and had studied the art of advantages, as gamesters exquisitely practise; and, in that school, it is a principal maxim, that "if you cannot gain upon the adversary, be sure let him not gain upon you. Accept the play offered; but offer none, for fear of being cross bit." And the foundation of this noble art is to manage so as to put the adversary into a passion, and to be calm yourself. I have heard his lordship discourse much upon this subject; and he said that passion had a credit with him; for wherever it appeared, he commonly found the honesty lay. He could discern often, when wrangles came before him, the steps of a knave, in working the adversary, and then making his advantage against him. As for instance, the knave would stand the being accused of all the evil that could be uttered by an intemperate man against him, and not be moved; for, perhaps, he knew it all to be true. Then would he give the other a dry lash or two, that put him into a passion that made him guilty of many indecencies. And then he would reply mildly, "Pray, Sir, contain yourself, I shall say nothing but what is true." "True?"

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said the other in a rage, and went on. Then the knave turned to the judge, and "My lord," said he, "you see this gentleman hath conceived a displeasure against me; I know not for what; I never did him any wrong." And then proceeded to charge all their difference upon the other's passionate quarrelsome humour. His lordship was, for this reason, apt to think passionate men honest, because passion, from the nature of the thing, is always in earnest. But as to his lordship's command of his own passion in cases of displeasure, and how, with nice turns of speech, he often used to divert the matter, I shall give an instance or two. Once a carrier had grossly abused him, and to a considerable loss. "Now," said he, "if I had not been a lawyer, I should certainly have sued this man." And upon a like abuse, which no man could well have borne with patience, he only said, "Now should I be very angry with this fellow, if it would do me any good." I remember, at his table, a stupid servant spilt a glass of red wine upon his point band and clothes. He only wiped his face and clothes with the napkin, and, "Here," said he, "take this away;" and no more. I do believe that this seeming apathy, which was the effect of his reason, and just estimate of things with respect to his character, and good or evil consequences, was prejudicial to him at court; for the trickers and

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jesters there (as I hinted before) thought he would bear any thing. But he showed most of them, and to their faces, that he knew how to resent; as I have touched, on occasion of the calumny of the rhinoceros, in proper place.

Impudence in counsel sharply coerced.

There were yet some occasions of his justice, whereupon he thought it necessary to reprehend sharply. As when counsel pretended solemnly to impose nonsense upon him, and when he had dealt plainly with them, and yet they persisted, this was what he could not bear, and, if he used them ill, it was what became him, and what they deserved. And then his words made deep scratches, but still with salvo to his own dignity, which he never exposed by impotent chiding. The properest instances that I can give of this temper, will be the showing some impudent assertions of the times urged to him, or where he came, with no reason of law, but being utterly against both, and only the will and pleasure of a faction, to warrant the brazen nonsense, was extant to maintain them. These his lordship had set down in a paper, and titled them "Impudent Assertions," to which I will annex a postil for explanation.

Impudent assertions.

"1. That a *Certiorari* should not remove an "indictment."

In the famous reign of Ignoramus, the grand jury of Middlesex thought fit to indict the Duke of York, the king's brother, for not coming to

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church for a month, that is, for recusancy; and it was thought fit that the indictment should be removed, from the sessions at the Old Bailey, up to the King's Bench, in order to a *non pros.* there; and, accordingly, a *certiorari* was brought and delivered to the officer. Then comes a serjeant at law to move that it might not be allowed. His lordship was then the senior judge upon the bench, and gave the rule. He asked the serjeant with what confidence he could come there to pretend that the court of Oyer and Terminer should not obey the process of the superior court of King's Bench? But nothing, that he could say, would silence the serjeant, who still urged that the indictment ought not to be removed; than which nothing could be more provoking to his lordship, who only told the serjeant "He spoke with a cadence, but all that he said, signified nothing." This short reproof fell so unluckily, that the worthy serjeant, for many years after, among the lawyers, was called Jack Cadence.

"2. That the sheriffs of London were judges "in the common hall, and that it was the husting's "court."

Of this in the Examen.

"3. That an Habeas Corpus did not lie for "Mr. Pepys and Sir Anthony Dean, and they not "delivered upon it till a dissolution."

These gentlemen had, in their hands, the af-

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fairs of the navy; and being creatures (as it was termed) of the Duke of York (and their places very profitable) there was a fierce disposition to remove them. And, thereupon, factious crimes were stirred up; as (for instance) that they revealed to the French the state of our navy; for which the only evidence was a gentleman who saw, at Paris, a list, which must be presumed to have come from them. Whereas it was no other but a list formerly published by order of the Admiralty, and cried about the streets in London. But, in fact, these gentlemen were committed by the House of Commons, as for crimes at large, triable at the common law, and not for either contempt of the house, or breach of privilege. But, notwithstanding all that, upon counsel urging that the Habeas Corpus did not lie, they could have no law for their liberty till the parliament was dissolved. His lordship was no judge where that cause came; but he used to exaggerate the monstrous impudence of counsel that insisted so iniquitably.

"4. That the king cannot pardon an impeach-
"ment."

This is largely treated of in the Examen. But, in his lordship's sense, the question was just as fair, as if they had said that the government of England was not monarchical. The king was the proprietor of all public justice; which all

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people allow. And what should distinguish away his right in one court, viz. the House of Peers, more than in all the rest? And likewise, when one body of men are the accusers; that is, have the part to inflame, more than another? Unless it be said that the ——— are sharers in the sovereignty.

"5. Prisoner not acquit, but the jury discharged, "and the same witness afterwards spake fuller, "and convicted."

This is the case of Whitebread the jesuit,* and will be found more fully in the Examen. There was a double enormity here; first, not trying the prisoner when all things were ready, and the jury charged. Next, taking the same testimony, only new instructed. But his lordship might be inwardly displeased at this and the next. It is sure enough he did not appear in public to resist either. Which must be charged upon the ardour of the times, and the fruitlessness of appearing; and, if that be not cause enough of silence, it must remain, on his lordship's part, unanswered.

"6. Confute dying sayings, in order to convict "others."

This was under the same rage of the times. His lordship was not president to manage the trials. I can well remember him bitterly concerned at the impudence of such proceedings; but he knew not how to help them.

* See his trial in *Howell's State Trials*, vol. vii. p. 311.

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His lordship was commonly reputed a high flier, or, prerogative-man.* It is true enough that his judgment was to give the crown all its lawful prerogatives; and he would willingly have consented that it should have had, in some cases, title to more; as I have showed in his lordship's ministry. But that he was not equally just to the people in all their rights, as well of form as substance, is utterly false. If we justly regard his censurers, it will be found that his chief blame, at the bottom, was only that he would not sacrifice the law to the iniquity of the times, and, contrary to manifest duty, deny justice to the crown; His judgment of the prerogative.

* The young lawyers of North's day were mostly attached to the country party. "So few gentlemen of the law were noted for loyalty, (I use the word of that time) that it was made a wonder at court that a young lawyer should be so. The reason was, because, at the time of the Restoration, the profession, that commonly follows the encouragements, was not well furnished with Cavaliers, and the chief practice fell into the hands of those who before had the vogue; although some of them, by virtue of the act of indemnity, escaped practising at the Crown-bar as defendants for themselves. This made it a fashion for those that rose up under them to be against the court, for they would allow none else to be good lawyers; which was a prejudice that only great abilities, with some favour, could rise up against." *Examen*, p. 513. The lawyers, "following the encouragements," became, during the reign of Charles II., as much attached to the crown as they had formerly been to the commonwealth. See the Address of the Barristers and Students of the Middle Temple to James II. *Fox's James II.*, p. 92.

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and so in other circumstances, as faction favoured. This was demonstrated by the sequel; for while he was of opinion that the Tory party, in the temper of those times, pursued the true interest of England, that is to support the church and crown, according to the legal establishment of both, he was a Tory, as they called it. But when the Tory party, or rather some pretended leaders, exceeded in joining with such as exalted the power of the crown above the law, and sought to pull down the church; then he was dropped from the Tory list, and turned Trimmer. And so any firm honest man shall find himself, as it were, changed; when, in truth, he is the same; only the world, to which the change belongs, passeth by him.

I have heard his lordship discourse much of ignominious distinctions, and particularly that of Whig and Tory. I have given the history of this party distinction in the Examen *; where I

* See the *Examen*, p. 326. The origin of the names Whig and Tory is generally referred to the period of the Exclusion Bill. On the prorogation, which took place in consequence of that measure, numerous petitions were presented to the king, praying that parliament might be again assembled; and, in opposition to these, counter-petitions were sent up, in which the petitioners stated their *abhorrence* of the proceedings adopted by their adversaries. The two parties were consequently termed *Petitioners* and *Abhorrers*, names which were shortly after changed for what were considered the more re-

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have showed that the faction began the game, and not the loyal party, as some now would per-

proachful appellations of Whig and Tory. "The word Tory," says Roger North, in the *Examen*, "which signified the most despicable savages amongst the wild Irish, being a vocal clever-sounding word, readily pronounced, kept its hold, and took possession of the foul mouths of the vulgar." The name of *Tantivies* was also bestowed upon the same party, and was a common word of reproach amongst the pamphlet-writers of the day: it signified, according to Roger North, "*riding post to Rome.*"

On the other hand, the Tories were not idle in discovering a *sobriquet* for their enemies. After adopting and abandoning several words, as not sufficiently expressive of their bitterness, they fixed upon the term *Whig*, "which was very significative," says Roger North, "as well as ready, being vernacular in Scotland, (from whence it was borrowed) for corrupt and sour whey;" a derivation in which, however, Burnet does not agree with him. (See *Own Time*, vol. i. p. 66.) According to Rapin, the name had been before bestowed in Scotland upon the Presbyterians and rigid Covenanters. Kennett tells us, (vol. iii. p. 370) that "the nation was so divided into party and faction, under the unhappy names of Whig and Tory, that at elections for parliament, and other public meetings, it occasioned many tumults and riots, and other personal challenges and combats."

The word *mob* had its origin at nearly the same period. "I may note," observes North in the *Examen*, p. 574, "that the rabble first changed their title, and were called the *mob* in the assemblies of this club. It was their beast of burthen, and called first *mobile vulgus*, but fell naturally into the contraction of one syllable, and ever since is become proper English."

"Amongst all the engines of dissension," says a very

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suade us: so shall say only that when the exclusion bill, to disinherit the Duke of York, was brought forth, all the factious people, and their libels, chimed in to defame the duke; and, among other topics, that of entertaining the Irishmen was one. Whereupon his friends were termed Bog-trotters, wild Irish, or, which means the same thing, Tories. And there was such a pregnancy of contempt in that word, as made it current; and the Loyalists had it at every turn, with the epithets of damned, confounded, and the like. His lordship observed that the loyalists were *not* at all ashamed of the name, but took and owned it as their honour; which he said was the best way to frustrate the wicked intent of the other side, which was to cast an ignominy upon them. And so the primitive Christians did; for that,

acute writer, "there has been none more powerful in all times, than the fixing names upon one another, of contumely and reproach; and the reason is plain in respect of the people, who, though generally they are incapable of making a syllogism, or forming an argument, yet they can pronounce a word, and that serves their turn to throw it, with their dull malice, at the head of those they do not like. Such things ever begin in jest and end in blood; and the same word which at first makes the company merry, grows in time to a military signal to cut one another's throats." *(Preface to the Marquis of Halifax's Character of a Trimmer.)*

In the new series of the *Curiosities of Literature*, Mr. D'Israeli has inserted an amusing paper on Political Nicknames.

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which the heathen cast in their faces as the greatest reproach, they accounted their glory, which was the cross. But it was not long before the Tories made full payment by the term Whig; as will be found more particularly related in that book.

Orthodox, just, and conformable.

I should do an injustice to the honour of his lordship's memory, if I should go about, by any reasoning of mine, to vindicate either his probity, virtue, or justice; all which were amply conceded to him, even by his adversaries; which they expressed by owning him an excellent justiciar; and that includes all the rest. An excellent account, indeed, of a betrayer of his country, as some laboured to have him thought! And how little a disposition he had to be a Papist, or popishly affected, as in those times was canted, the whole series of his behaviour demonstrated: for, as to his person, he ever kept his church, and frequented the sacraments, as the congregation of St. Dunstan's and St. Giles's could testify for many years; in which churches he had a seat for himself and his family. If, at any time in his life, he failed, it was when he was overwhelmed with business; and then indeed he took liberty sometimes, saying that Sunday was a day of rest. But he was scrupulously constant in those days when he was a judge, and his person conspicuous, that he might be neither wanting in

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good example, nor be positively a bad one. As to his justice, no man was more exquisitely bred a judge than he was; for, besides his acquisitions by the study of the law, in the greatest fulness of it, joined with general scholarship, he had been, for many years, a leading practiser under judges of all capacities and humours; and knew the trick of blinding a judge by raising mists, or imposing false colours. No art or cunning in business was new to him; and, when it was his turn, no counsel could gain upon his steadiness, by any stratagem they could invent to put upon him. He was ever beforehand with them, and showed he knew their tendencies; though the greatest artists that have been known in Westminster-hall, as Mainard, Jones, &c. practised under him.

Irreconcileable to frauds and forgeries.

At his first entrance upon his judicial employment, he bent his mind to find out ways of easing the people, that had the ill fortune to be brought under the jurisdiction of Westminster-hall, either as plaintiffs or defendants. I have already showed how much a friend he was to a public register of titles. He was a declared adversary of all frauds, fraudulent conveyances, and forgery. He was never so alert in all his faculties, as when, upon examination or trial, he suspected any such falsities. After he had sat on *nisi prius* causes in London and Middlesex, where commonly a con-

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stant set of men attended upon juries, especially in London, a competent time, he was so much in credit with them by his clear way of presenting the facts to their consideration, and his just reasoning thereupon, that they very seldom, if ever, found against his opinion. And, with this character, I close this third, or judicial, stage of his lordship's life: as to which, and the rest, I may be thought over much his friend in expressing so much good, and so little evil, of his lordship; which, with some, may seem above human frail nature to allow. But I am serious, and write as if I were sworn; entirely assured that all the good is true, and the evil of him no other, nor more in any respect, than in this work I have expressed.

Friendship to Lord Nottingham.

The Lord Keeper Finch, as was hinted before, had been an unhappy valetudinarian; and, about the time when the king began to be at ease, and free from the brigues of plots, declined very fast, and, at length, seldom came forth, and was just able to do business in chancery, which was familiar and easy to him; but the affairs at court had forsaken him, or rather he them, and all settled upon his lordship's shoulders, who dealt with all imaginable friendship and candour, with respect to my lord chancellor; kept troublesome matters from him, and when it was necessary for him to be troubled, or if any persons were perceived to

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be creeping towards him with snaring propositions, his lordship always prevented them, by giving the chancellor intimation, and friendly hints; so that, in his weakness, he was seldom or never surprised; than which there could not have been greater instances of service done him. And I believe there never was predecessor and successor such cordial friends to each other, and, in every respect, mutually assistant, as those two were.* His lordship's often taking his cushion in the House of Peers in his absence, and acting, in many things, as co-chancellor, made it no wonder if, at his utmost declension, his lordship was, by the whole nation, voted into his seat.

Intelligence at Windsor.

And therefore I come now to his lordship's last and highest step of preferment in his profession, which was the custody of the great seal of England. And, for conformity of language, I call this a preferment; but, in truth (and as his lordship understood) it was the decadence of all the

* Burnet has thus described the two. "By the death of the Earl of Nottingham the seals were given to North, who was made Lord Guilford. He had not the virtues of his predecessor, but he had parts far beyond him. They were turned to craft, so that, whereas the former seemed to mean well even when he did ill, this man was believed to mean ill even when he did well." (*History of his Own Time*, vol. ii. p. 921.) Burnet appears to have formed too light an estimate of Lord Nottingham's abilities. See the character of him given by Sir W. Blackstone, (*Commentaries*, b. iii. c. 4.)

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joy and comfort of his life; and, instead of a felicity, as commonly reputed, it was a disease, like a consumption, which rendered him heartless and dispirited, till death came, which only could complete his cure. When the lord keeper lay languishing, his lordship (being newly returned from Windsor) with a charge of privacy, told us that he had there received an intimation that the great seal would be put into his hands; and that he had represented himself as most unfit for the place; and, with all his art and skill, had declined it. It seemed that this intimation was from the king himself.* His lordship seemed then inclined, or rather resolved, if it were offered, to refuse it.

Reasons as to accepting the seal, *pro* and *con.*

The tenour of our discourse with him, on this occasion, was, that it seemed impossible for him to carry it off so; for all agreed, that, as things then stood, he was the only person capable of the place: and while it appeared that the king's service was deeply concerned, if his majesty commanded, how could he refuse? It would be said

* In a letter from the Duke of York to the Prince of Orange, dated 18th December, 1682, the duke says, "We came this morning from London, where I do not know whether the lord chancellor were dead or alive, he being speechless last night. It is believed that Lord Chief Justice North will succeed him, who is both able and bold, as well as loyal." (*Dalrymple's Appendix*, p. 53.)

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that, having been already so well preferred and honoured by the king, who had a singular value and respect for him, and, by the influence of his majesty's favour, he had greatly advanced his fortunes; now, in the crisis of his affairs, when his lordship's service, in that post, was not only useful, but in a sort necessary, he must submit as a condemned person, or incur the censure of tergiversation and ingratitude, and have no ease in his thoughts, on that account, as long as he lived, if he should not conform to his majesty's pleasure in this great emergence. So we. But he might think, and not without reason, that we regarded our own advantage by his promotion: so there was self-interest in persuading him so much to his inconvenience. But, at length, he owned himself convinced that he could not peremptorily refuse the seal; not so much for what we had alleged to him, but the state of the times, which inextricably obliged him to the service of the crown in this conjuncture. Besides, if he rudely broke off, he wounded his interest, and could not answer that favour enough would survive to keep him in the place he now had; nor that faction would not play higher at him than ever it had done. Therefore he must make good his ground, and not be retrograde, and so keep entire his protection. But yet, as he said, he would never accept the seal

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without a pension along with it. And this is plain enough from the hints his lordship left behind him, which I have set down as follows:—

" Desire to avoid and silence. Lord Chancellor " dies, notice, and decline without pension. Seals " deliver, and manner."

Hints of his lordship about the great seal.

These are all in series of the same matter: therefore I shall pursue them as they lie. It appears first, that, when the intimation was given to his lordship, he made no answer; which is understood by the word silence. After the Lord Chancellor Finch was dead, and some time before, all the handles, that could be, were held out as temptations to him to sue for the place. This was the cunning of the Lord Rochester, then chief in the treasury, who was working the husbandly point to save the pension; which he might, perhaps, do better if the place were asked, than if it were proffered. But his lordship, as he wrote, answered all with silence. But this artful proceeding of the Lord Rochester was plain enough to be discerned; and his lordship would have smelt a subtiler trap than that. When the time was taken at Whitehall, to make the proffer from the king directly, his lordship insisted not to accept, unless a pension was added. For the charge, of living in that high station, was not answered by the ordinary profits of the seal; and he

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could not, without his majesty's bounty, such as had been allowed to his predecessor, undertake to comport with that dignity as his majesty's honour and service required, and would be expected from him. His lordship was much opposed, and argued with upon this point, with persuasions not to capitulate. It was dangerous to do it, and not for the king's service; for such, being now yielded to, would rivet a precedent. The Lord Nottingham had indeed a pension; and now another would turn it to a salary, as of course, to charge the crown. It would be much better to accept the seal, and rely upon his majesty's goodness, who doubtless would do better things in a way of bounty, than upon terms.—But these, and other court syllogisms, were fitter for chickens, that would peck at shadows, than for his lordship, who, all the while, resented their ill usage, and mean opinion of him; and one, of less temper than his lordship, would scarce have borne it. But, his lordship persisting, it was condescended to, that he should have a pension of 2000*l.* per annum; and then his lordship seemed contented to accept, and the king came, and put the seal (in the purse) into his lordship's hand, saying, "Here, my lord, take it; you will find it heavy." And therein his majesty acted the prophet, as well as the king; for, not long before his lordship's last sickness, he told me, and divers other of his

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friends, "that he had not enjoyed one easy and contented minute since he had the seal."

Passion at ill usage.

The evening when he went upon this errand to Whitehall, some of us stayed in expectation of his coming home, which was not till near ten; little doubting the change that was to happen. At last he came with more splutter than ordinary, divers persons (for honour) waiting upon him, and others attending to wish him joy, and a rabble of officers, that belonged to the seal, completing the crowd, which filled his little house. His lordship, by dispatching these incumbrances, got himself clear as fast as he could; and then I alone stayed with him. He took a turn or two in his dining-room, and said nothing; by which I perceived his spirits were very much roiled: therefore I kept silence also, expecting what would follow. There was no need of asking what news, when the purse, with the great seal, lay upon the table. At last his lordship's discourses and actions discovered that he was in a very great passion, such as may be termed agony; of which I never saw in him any like appearance since I first knew him. He had kept it in long; and, after he was free, it broke out with greater force: and, accordingly, he made use of me to ease his mind upon. That, which so much troubled him, was the being thought so weak as to take ill usage from those about the king, (meaning the

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Earl of Rochester,) with whom he had lived well, and ought to have been better understood. And, instead of common friendship, to be haggled withal about a pension, as at the purchase of a horse or an ox; and after he had declared positively not to accept without a pension, as if he were so frivolous to insist and desist all in a moment; and, as it were, to be wheedled and charmed by their insignificant tropes; and, what was worst of all, as he more than once repeated, "to think me worthy of so great a trust, and withal so little and mean as to endure such usage, as was disobliging, inconsistent, and unsufferable. What have I done," said he, "that may give them cause to think me of so poor a spirit as to be thus trifled with?" And so on, with much more of like animosity, which I cannot undertake to remember. And, after these exhalations, I could perceive that, by degrees, his mind became more composed; and time, that conquers all things, dissipated these personal resentments, and made way for troubles of a stronger impression. And afterwards, like a good Christian, he forgot and forgave, making no dependences, or troubles, to himself or others, especially not to offend the king, on account of any distaste; but corresponded and co-operated, with all those which his majesty thought fit to serve him, with all easiness and affability. This is a method not

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much practised by courtiers and insulting favourites, who breathe nothing but ruin and destruction to all that offend them; but in the ease and happiness of a monarch, a jewel not inferior to any that can shine in his crown. After this, his lordship applied himself to the establishment of his family and officers. He went to Westminster-hall, the first time, as usual, with an honourable parade of nobility, &c. for honour attending him.* It was some time before he

* Amongst the friends who came to congratulate the new Lord Keeper, was John Evelyn. "Sir F. North being made Lord Keeper on the death of the Earl of Nottingham the Lord Chancellor, I went to congratulate him. He is a most knowing, learned, and ingenious person; and, besides having an excellent person, of an ingenuous and sweet disposition, very skilful in music, painting, the new philosophy, and political studies." (*Evelyn's Memoirs*, vol. i. p. 513.) By the *new* philosophy, Evelyn means experimental philosophy. At an early period, it was customary for the Chancellor, on the first day of the term, after his appointment, to ride on horseback to Westminster, accompanied by the judges and other distinguished persons. Lord Shaftesbury, on obtaining the great seal, resolved to revive this custom; and we are indebted to Roger North for the following amusing account of the cavalcade. "His lordship had an early fancy, or rather freak, the first day of the term (when all the officers of the law, king's counsel, and judges, used to wait upon the great seal to Westminster-hall), to make this procession on horseback, as in old time the way was, when coaches were not so rife. And accordingly, the judges, &c. were spoken to, to get horses, as they and all the rest did, by borrowing and hir-

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could be possessed of the great house in Queen-street, where the seal had been formerly kept, and had a room fitted for hearing motions, and causes in equity. And, till then, he kept his days in the Middle-Temple-hall; else he moved not but when he went to take his ultimate rest at Wroxton.

His burthen increased.

By his acceptance of the great seal, he became, as before of the law, so now of equity, a chief, or rather sole justice. And, more than that, he must be a director of the English affairs at court, as chief minister of state with respect to legalities, for which he was thought responsible. So what with equity, politics, and law, the cares and anxieties of his lordship's life were exceedingly

ing, and so equipped themselves with black foot-cloaths in the best manner they could; and divers of the nobility, as usual, in compliment and honour to a new lord chancellor, attended also in their equipments. Upon notice in town of this cavalcade, all the show-company took their places at windows and balconies, with the foot guards in the streets, to partake of the fine sight; and being once well settled for the march, it moved, as the design was, statelily along. But, when they came to straights and interruptions, for want of gravity in the beasts, and too much in the riders, there happened some curvetting, which made no small disorder. Judge Twisden, to his great affright, and the consternation of his grave brethren, was laid along in the dirt. But all at length arrived safe, without loss of life or limb in the service. This accident was enough to divert the like frolic for the future, and the very next term after, they fell to their coaches as before." (*Examen*, p. 57.)

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increased: for either of these provinces brought too much upon the shoulders of any one man, who cordially and conscientiously espouseth the duty required of him, to be easily borne.

The chancery court easy to his lordship. The rise and increase of it.

As for the business of the chancery, our work will be short; because that province was easy to his lordship; except only when his time was retrenched so that he could not sufficiently attend it. He had been a capital practiser there as solicitor and attorney-general, and in the front of business for many years; which made the whole tour of that court familiar to him. The greatest pain he endured, moved from a sense he had of the torment the suitors underwent by the excessive charges and delays of the court. For the easing of whom, he was always in thought, more or less, to contrive ways and means of expedition, and retrenchment of charges. As the business of that court is more, and of greater value than that of other courts, so are the abuses more felt; and, consequently, his lordship was more intense in his meditations to regulate them. And the truth is, a court, as that is, with officers and fees proper for a little business, such as the judiciary part anciently was, coming to possess almost all the justice of the nation, must needs appear troubled. For it began with common petitions, and the defendant's answer wrote on the back of it. And, when the process was young, a *subpœna*, which

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was a legal writ, and attachment upon it for disobedience, carried great terror. But when the terror of that abated, and defendants came in but slackly, then addition was given to the terror, and proclamations were to be made upon the second attachment, if the party hid away from the first; and if that second proclamation did not fright him in, then he was a rebel, and commissioners, that is, a petit army, was raised to fetch him in, as standing out in rebellion; and there was an end. But if he was caught and escaped, then the king's serjeant at arms went to look for him. But sequestrations were not heard of till the Lord Coventry's time, when Sir John Read lay in the Fleet (with 10,000*l.* in an iron cash-chest in his chamber) for disobedience to a decree, and would not submit and pay the duty. This being represented to the Lord Keeper as a great contempt and affront put upon the court, he authorized men to go and break up his iron-chest, and pay the duty and costs, and leave the rest to him, and discharged his commitment. From thence came sequestrations; which now are so established as to run of course after all other process fails, and is but in nature of a grand distress, the best process at common law after a summons, such as a *subpœna* is:—what need all that grievance and delay of the intervening process?

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His lordship was sensible of the prodigious injustice and iniquitable torment inflicted upon suitors by vexatious and false adversaries, assisted by the knavish confederating officers, and other chicaneurs that belong to the court. He was no less desirous heartily to apply all the remedy he was able to so malignant a disease, of which he had had full experience, and he had frequently observed it in the course of his practice. For the Lord Keeper Bridgman, and Lord Nottingham, gave all liberty to counsel and officers; so that then the not very commendable trade of the court ran high.

Sensible of, and desirous of remedying all evils in that court.

The Lord Bridgman, who was a very good common law judge, made a very bad chancellor. For his timidous manner of creating and judging abundance of points, some on one side, and some on another, and, if possible, contriving that each should have a competent share, made work for registers, solicitors, and counsel, who dressed up causes to fit his humour. Then came my Lord Shaftesbury, like the month of March, as they say, "in like a lion, and out like a lamb." For he swaggered and vapoured what asses he would make of all the counsel at the bar; but was soon reduced, as is more fully declared in the Examen.*

Of the Lord Bridgman, Lord Nottingham, Lord Shaftesbury.

* Page 45 *et seq.* Dryden has given a very favourable idea of his lordship's merits as an equity judge, in the charac-

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The Lord Nottingham, formerly attorney-general, came in and sat there a great many years.* Dur-

ter which he has drawn of him in his *Absalom and Achitophel.* See also *Rawleigh Redivivus, or the Life and Death of Anthony Earl of Shaftesbury* (p. 72), where his judicial administration is mentioned with much praise. It should be observed, however, that this work is clearly the production of a violent partizan.

* Sir Heneage Finch, one of the most distinguished members of a family remarkable for their eloquence and their attachment to the profession of the law, was made attorney-general in 1670, and about three years afterwards, on the removal of Shaftesbury from the woolsack, was raised to the dignity of lord keeper. In 1677, the title of lord chancellor was bestowed upon him, and in 1680 he presided as lord high steward on the trial of the unfortunate Lord Stafford, and was one of the lords who voted him guilty. In passing judgment "he delivered," says Burnet, "one of the best speeches he ever made. But he committed one great indecency in it; for he said, Who can doubt any longer that London was burned by the Papists? though there was not one word in the whole trial relating to the matter." Notwithstanding this vote, Lord Nottingham was a staunch Tory, and as such, received his share of the eulogies lavished by Dryden on that party. He is introduced in the second part of *Absalom and Achitophel,* under the name of Amri.

> Our list of nobles next let Amri grace,
> Whose merits claimed the Abethdin's high place,
> Who, with a loyalty that did excel,
> Brought all the endowments of Achitophel.
> Sincere was Amri, and not only knew,
> But Israel's sanctions into practice drew;

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ing his time, the business, I cannot say the justice of the court, flourished exceedingly. For he was a formalist, and took pleasure in hearing and deciding; and gave way to all kinds of motions the counsel would offer: supposing that, if he split the hair, and, with his gold scales, determined reasonably on one side of the motion, justice was nicely done. Not imagining what torment the people endured, who were drawn from the law, and there tost in a blanket.

His lordship's care and method of introducing his amendments in the court of chancery.

His lordship coming after, and knowing how much the suitors endured by this flourishing of the court, and having no content in any thing but the substance of justice, and dispatch of the suitors, and ever accounting that unreasonable delays were the same in the mean, as injustice was in the end; and that it often made the suitor quit

> Our laws, that did a boundless ocean seem,
> Were coasted all and fathomed all by him.
> No rabbin speaks like him their mystic sense
> So just and with such charms of eloquence;
> To whom the double blessing does belong,
> With Moses' inspiration Aaron's tongue.

The eloquence which distinguished Finch procured him the names of the English Cicero and the English Roscius. Evelyn calls him the smooth-tongued solicitor, and he was generally known by the name of "silver-tongue." Burnet, indeed, says, "that his eloquence was affected, laboured, and too constant on all occasions, and that he lived to find it much despised." (*Own Time.*)

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his right, rather than live upon the rack in pursuing it; bent his thoughts to compass a tolerable regulation of the court. It may be asked what came of all this? For surely somewhat considerable must be done by way of reform, when his lordship not only saw the necessity, but had power to amend faults. As for that, I must inform that his lordship considered the nature of alterations; and that, when folks design very fairly to stop one hole, two or more shall spring in the room of it. So very hard is it to foresee events, and to meet with the bad practices of corrupt agents. He was resolved to make and publish a book of rules and orders for the direction of the officers, clerks, and solicitors in their practice, and for the advantage of the suitors, in the best manner he could contrive. But he thought it not a right method, as some have done, at the very first to fall on with a volume of alterations, before he had made some experiences in the court, and consulted the clerks, and the bar, as he often did afterwards in public, to hear what they could allege for, or against, any thing he thought fit to propose to them, when the inconvenience, to be removed, was flagrant in court. And, accordingly, he sat and dispatched the business of the court, and, as occasion proffered, he declared his mind, and retrenched many superfluities, or rather nuisances, in the court. Another thing, that made him decline falling so

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early upon a book of orders, was, that it would give so great alarm to the bar, and officers, with the solicitors, as would make them confederate and demur, and, by making a tumult and disturbance, endeavour to hinder the doing any thing of that kind, which they would apprehend to be very prejudicial to their interests. Whereas, if the matters were presented in court on fit occasions, which would offer themselves frequently, the work would almost do itself by degrees; which, all at once, would meet with great opposition. And after he had thus occasionally put in practice the chief of his intended regulations, and seen, in some measure, the consequences of them, he might, with more assurance, and better satisfaction to himself and others, bring all together into a firm establishment, by an ample settlement of the course in practice, to be observed for the future.

Retrenched motions for speeding and delaying hearings.

And, pursuant to this proposition made to himself, he began first to rescind all motions for speeding and delaying the hearing of causes beside the ordinary rule of court. And this lopped off a limb of the motion practice. I have heard Sir John Churchill, a famous chancery practiser, say, that in his walk, from Lincoln's-Inn down to the Temple-hall, where, in the Lord Keeper Bridgman's time, causes and motions out of term were heard, he had taken 28*l.* with breviates, only for motions and defences for hastening and

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retarding hearings. His lordship said, that the rule of the court allowed time enough for any one to proceed or defend; and if, for special reasons, he should give way to orders for timing matters, it would let in a deluge of vexatious pretences: which, true or false, being asserted by the counsel with equal assurance, distracted the court, and confounded the suitors. He used to commend the common law for the preciseness of its rules. There men knew their times to plead, to give notices, to enter judgments, &c. and he would have the like done in the chancery. "Therefore," said he, "look to your hits: you know the course and the time; do accordingly, and you shall have the benefit, and not be hastened or delayed."

He ordered the parties to show the masters any errors; but that turned to ill effect.

Then he found very great mischief by errors in masters' reports, which, shown to him, had been set right: but the parties craftily let the report go, and depended to bring it back by exceptions, and so torment the court with abundance of frivolous matters for experiment, and come off at last with such a slip which carries the costs, and is an immane vexation to the parties. His lordship ordered that each party should have a copy of the report before it was delivered out signed: to the end they might, if there were cause, show the master any gross mistakes: for such often happened by inadvertence, and were made a foundation, by way of trick, to lodge exceptions upon,

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and secure costs. But I am apt to think that, if his lordship had stayed much longer in the court, that order would have received very great alteration; for, with all the good intended, and manifestly appearing in the front of it, yet, in practice, it turned to delay and vexation, as bad, if not worse than before. For it introduced two reports instead of one, and multuple attendances. For the vexatious side baffled before the master, as long as he could, upon trifles, keeping back the true points; and then, after the report was drawn, and copies delivered out, there come in the exceptions in writing, and the cause, before the master, was but beginning. And these exceptions, before the master, were added in the cause: and it is become almost of course to prefer them; as if exceptions to the court had not been vexation and delay enough.

He was a professed adversary to all attempts for stopping the course of the common law. I remember one Barebones, that was called doctor, a famous builder, that overtraded his stock about 1000*l.* per. ann. and often wanted injunctions to stay suits at law, finding his designs, that way, now failing, said to me "that his lordship had not sat yet long enough to be a good chancery man:" for it is the foible of all judicatures to value their own justice, and think, or at least pretend, that there is none so exquisite as their's; and, speak-

He stopped the course of injunctions upon exceptions to an answer filed.

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ing of other courts, it is commonly with an air of contempt; while, at the bottom, it is the profits accruing that sanctify any court's authority. And, upon this account, the court of chancery had been very liberal in the matter of injunctions to stay suits at law. But his lordship thought fit to deny them in many cases where they used to go almost of course. As, for instance, upon exceptions filed to an answer; which used to be a bar to the motion for dissolving the injunction upon coming in of the answer; which injunction used to go of course, upon an attachment sued out, for want of an answer, or *dedimus* issuing to take an answer in the country. But his lordship required the counsel, that would continue the injunction, to show that the answer was insufficient in a material point. And the like was done in some other cases; I do not instance in all.

Retrenched the superfetation of interlocutory orders.

His lordship also set himself to stop the superfetation of orders. And they were a subject of his daily reprehension; for the causes came often to a hearing, with a file of orders in the solicitor's bundle, as big as the common-prayer-book, for commissions, injunctions, publications, speedings, delayings, and other interlocutories; all dear ware to the client in every respect. But, in a few terms, his lordship reduced the quantities; for he was strict to the observance of his rules; and, for the most part, refused to make orders *nisi*, &c. as

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commonly was prayed when notice was not given of the motion; but held the solicitors strictly to their notices to be made appear by affidavits (and those to be filed) or they took nothing by their motion. Nor would he, without apparent equity demonstrated, grant any thing to divert a cause out of its due course. And thus the tricking sort of practice, so much used in the court formerly, was greatly diminished. And the solicitors were fearful of using art; for, being taken napping, they never escape sharp reproof, and the cause fared no whit the better for it, and their own credit suffered.

Very difficult about re-hearings.

His lordship set his face also against the infinite delays by rehearings, re-references, and new trials; in all which cases, he was so difficult that nothing but the plainest reason in the world, or rather necessity, drew him to yield to grant them.

His method of controlling the register's office.

The last instance of his lordship's care of the suitors, was to quicken the dispatch at the register's office, and (if possible) to break the neck of those wicked delays used there. This was the hardest matter to redress that belonged to the court. The register's is a patent office, and the poor men, the deputies, come into their employ upon very hard terms, and the charge of presents and new-year's gifts adds to the weight upon them; so as they are forced to bush about for ways and means to pay their rent and charges, and gather an estate,

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as they think must be done, in a few years; wherein they are not wanting to use their best endeavour, lest they suffer in the reputation of their skill. And, accordingly, scarce an order passeth without bribes for expedition in that quarter; and that is an article, in the solicitor's bill, as much of course as the fee for the order. His lordship used to chide them publicly, when justly complained of (and it could scarce be otherwise than justly) and also be very ready and easy to admit of complaints. And to prevent the colour they used for delay in cases decreed upon points nicely decided, and also to prevent motions for settling such orders, which often was done to jog the matter again, and see if the opinion of the court would alter, his lordship hath frequently ordered the register to attend him in the afternoon, and take the ordering part penned by himself. And his lordship was desirous, for his own satisfaction in many cases, to do so; for if the reasons of his decree were special, and such as came not under every cap, he cared not to leave the expression of them to the precipitate dispatch of a blundering register. At length the registers, finding what was agreeable to his lordship's mind, and what kind of orders he was careful in pronouncing, thought fit, of their own accord, in such cases, to attend his lordship with their penning, and receive his lordship's sense and corrections; and he always

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took it well when they did so, and was never uneasy to them. And the memorable register, Mr. Henry Devenish, was very well thought of by his lordship for his candid applications to him in that kind.

His lordship's designing a book of rules and orders.

Here it will be proper to those who may say, since his lordship knew the diseases so well, and had so much busied himself in the cure, why was time lost, and no general regulation of the course and practice of the court made? To that I must answer with bitter laments for the shortness of his lordship's life, which allowed but three years to his sitting upon that bench. He was naturally very quick of apprehension, but, withal, very deliberative, and would not only think long, but consult persons to be concerned, and confer with the skilful, and take the thoughts of his ordinary friends, whenever he was to do any thing that had a long train of importances to follow; and, being once satisfied within himself, he was not wanting to strike decisively and effectually. And it is to me very certain, that if his lordship had sat in that court a year or two longer, with tolerable quarter from the public, he had published a book of rules and orders, which had gone a great way towards purging out the peccant humours of the court, at least so far as the lord keeper had it in his power to do: and it must be confessed that is something restricted as to reformation of the

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offices; because equity is due to the officers as well as to others.

His lordship conserved the rights of officers, and aimed only to obviate abuses.

And, in all his designs, he showed no disposition to retrench officers, or the just profits of their places; but only that he would have them held strictly to their duty, and not have it in their power to aid abuses for their peculiar profit; and to be subject to correction, when either negligent, or ignorant; and to make amends to the suitors, who suffer thereby. Now most think that the offices themselves are the abuse, and ought to be retrenched; for what signify the six clerks, but to keep checks upon numbers of sheets that they may reckon strictly with the under-clerks, and not be imposed on, as to their dues, by them? What signifies all the process between a *subpœna* and a sequestration, and the officers that depend thereon, when the former is a summons, and the latter a *distringas*, answerable to the common law? And the like in several instances. But I guess his lordship considered that there was a justice due as well to the crown, which had advantages growing by the disposition of places, profits by process of all sorts; as also the judges and their servants, and counsel at the bar, and solicitors, who were all in possession of their advantages, and by public encouragement to spend their youth to make them fit for them, and had no other means, generally, to provide for them-

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selves and their families: and had a right to their reasonable profits, if not strictly by law, yet through long connivance. And men, not irregular or undeserving, ought to have, not only protection, but encouragement.

He left reformation of offices to the parliament, his justice wanting power as to that.

If any public order of men, or their employments, were mischievous to the public, it was for the parliament to remove them; and even they have always had a regard to the profits of officers, and seldom do any thing to their prejudice; and it is pretended that such interests hinder regulations in parliament. But that need not be so; for the parliament can make them compensation, but a judge hath no power or reason to alter the state of the offices under his judicature; but to reduce them to order, and keep them up to reason and duty, is sufficient.

He had no vanity, but went close to truth with all possible caution.

In all his model of regulation there was not the least ostentation or vanity, no formal inventions, but a direct intention to follow the truth of things, and to represent them pure and sincerely, with infinite caution that nothing he proposed, as far as he could foresee, might possibly turn to the prejudice of any person, at least not irretrievably; but that they might be as a fence or guard to rights, and to keep them from being oppressed by colour of law, and the course of the court, as they call it.

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Touched nothing but what he knew experimentally.

He was no collector, as some may be, who pretend to a great deal more than his lordship did; and sit, as at a receipt of custom, and, hearing divers people talk, from thence imbibe projects, of the practice of which they know little, but as they are insinuated (for the most part) insincerely, by designing officers and others, who project for their own private interest, and, under colour of the public good, when nothing is less in their thoughts, suggest what makes for themselves. And sometimes they prevail with great men, who do not plumb to the bottom, nor discern the drift or consequence, to put forward authoritatively their contrivances, by the name of regulations. But his lordship touched nothing but out of his personal observation and experience; and, being wonderful sagacious to understand the drift of all people in their business, was capable to know from things, and not from relation, what was amiss, and how, probably, to amend them, without introducing (as often happens) worse inconveniences. For he had seen acted to the life, all the dismal troubles men brought upon one another, by delays and shifts in chancery causes, together with all the bad qualities of an unjust, beggarly, crafty suitor, to the mortification of a poor client. I have often heard him mention a poor gentleman that had a very just cause, and was of himself very honest, but had not so much

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craft as his adversary, who, according to the forms and liberties given in the court and the offices of it, had snares laid for him which caught him; so that the counsel of his adversary, with their usual art, dressed him up in circumstances, colourable as they set them out, and made him look as like a very knave, as if he had been so in earnest. This was all surprise to him; and his own counsel was not instructed and ready enough to wipe him clean; and he, not having elocution to speak for himself, took the matter so to heart, as that he went home and in a fit of sorrow died.

His lordship uneasy with respect to remanets.

But to proceed: nothing sat heavier upon his spirits, than a great arrear of business, when it happened; for he knew well that, from thence, there sprang up a trade in the register's office, called heraldry, that is, buying and selling precedence in the paper of causes, than which there hath not been a greater abuse in the sight of the sun. If men are not forward, the officers know how to make them come on and pay; for they will expressly postpone the unprofitable customers, and so bring them to a sort of redemption. Therefore if the paper of causes is not well watched by the court, and the officers sometimes checked (for which, at best, there will be occasion enough) no man, without a vast expense, shall know surely when his cause will come on. And, as a poor treasury makes a rich treasurer, so this grievance

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is greatest, when the court itself wants dispatch. For the causes, left one day, are remanets to the next, and so on to the next, that there are attendances enough on that account. But when, over night, a man sees his cause the first in the paper and, next morning, finds it at the bottom, his disappointment is great; and he will be told that, without a touch of purchaseable heraldry, he will never be sure of his time. I have heard his lordship say that he never slept well if, in his paper over night, he found a great arrear of causes: so concerned was he, lest he might not be able to dispatch them. And, according to this compassionate intention, he laboured continually to retrench superfluities, as well in the modes of the bar practice, as in the passing orders, and other office dispatches. By which means, at length, he got the mastery of the court; and his remanets (if any) were few, and a moderate day often spent them: and then his heart was at ease. This continued till the parliament and (more unhappily) his own weakness came on, and made him unable to continue that close application to the business of the court; and, for want of due time allowed for hearing of causes, the reins of the court grew loose, and the paper became loaded with remanets, which to see was of itself, to him, a sickness. And I am confident it was one, and not the least ingredient, in bringing forward upon him that fatal

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distemper, which, after it had once seized, never left him till he died.

His lordship's care of the orders of the court, and preferring his reasons.

It was his lordship's manner, when he sat in the court, to hold in his hand the paper of causes; and if any thing moved in his thoughts considerable, either towards regulation of abuses, improving the forms and course of the court, or (in the hearing of causes) of nice reason, and difficult to determine, he called for the register's pen, and wrote it upon the day paper. He was much used to write upon his hand, and could do it very steadily; and, when he came home, he laid by the paper, with others he had so wrote upon, that if he would form a more solemn report of the case, he had the hint easily to do it. But he might also have another end in it; for if (as was touched before) a decree was pronounced, with exquisite terms and distinctions, his lordship did not always leave the drawing of the order to the register; for, if he mistook the sense of the court, then certainly followed re-hearings, or motions to settle the order; and sometimes the register himself, if he doubted, would come to his lordship to explain his sense to him. But his chief care of this kind, was when the subject matter of the cause was touchy, and great men, or great parties, concerned themselves in it, and there might afterwards follow some calumny or complaint.

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Libellers say nothing well. A notable trial of his lordship's justice in the case of Fitton.

I shall not have occasion here to touch more at large any of the especial litigated causes which he decreed. As for the few which were publicly taken notice of, and made the subject of news, and, by certain vile writers, traduced; amongst which are the case of Mr. Mayot's will, which is already fully related in the Examen;* and the case of the Duke of Norfolk against his brother; they shall be fully accounted for afterwards. It is the practice of libellers to take, or make, any pretences for calumny; but if never so many things are done well, there is no notice taken of them. And any historian, that doth the one, and not the other, is a partial tool, and no better than a libeller. Therefore, against the reflections falsely cast at the before-mentioned cases, I will subjoin one, wherein his lordship's conduct, as well as decree, may justly, and even in the measure of his adversaries (if it were not for his commendation) be accounted beyond the ordinary, even to a pitch of heroical justice. And it was in 1684, 1 Ja. II. between Fitton and my Lord Macclesfield †, formerly Gerrard. The cause was first decreed twenty-two years before; and now came to be heard before his lordship, upon a bill of review, to reverse the old decree. Mr. Fitton had lived very poor,

* *Examen*, p. 557; and see *Kennet*, vol. iii. p. 421.

† [This case is already related in the *Examen;* but as I find some more circumstances, of a pretty extraordinary na-

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and mostly in prison, ever since the decree, which had undone him. He was a notable, busy, soliciting man, and a papist; and that was a character of notable recommendation in the court of King James II.* Upon this account, Fitton had wormed himself into much favour; for the opinion they had entertained of his industry and ability was extraordinary: and, on the other side, the Earl of Macclesfield was stiff of the anti-court party. Fitton thought that, by virtue of his advantage in this reign, if he brought his cause about again, he should get the better of his adversary. Accordingly he went to work; and there being nothing in the cause, but the errors assigned in his bill of review, it soon came into the paper to be heard; and that was the time to ply his fare at court, to get an interest so strong as might secure my lord keeper, and then the work was done: and, accordingly, the king himself was so far overseen as to speak to his lordship for Fitton; which he did upon the usual topic, "of giving a favourable and patient hearing; and, in the main, recommended the cause to his justice." But all the lords,

ture, added to this account of it, I thought proper to insert it in this life.] *Note by the author.*

* Fitton was afterwards made Lord Chancellor of Ireland, in the place of Sir Charles Porter, though he had been twice convicted of forgery. See *Rose's Observations on Fox*, p. 94. *Kennett*, vol. iii. p. 500; and see the *Examen*, p. 558.

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of that interest, and some others of most potent influence at that time, applied to his lordship more directly for his favour, as to a poor, oppressed man. I believe his lordship was never so besieged in all his life; and I believe it irritated his spirits so much that, if he would have been partial, it had been for the other side. But the cause came on, and the counsel strong on both sides. The earl himself was in court, without any company of his own. He, knowing the state of affairs, concluded his cause, at this time, lost, and depended upon some after-game to retrieve it. But there might be observed, about the court, enough of the opposite party. His lordship took himself to be upon the tenters of his behaviour; and, for that reason, determined to let the counsel, on both sides, have their full swing; and, however importunate, not to correct them for any thing, but only to hold them close to the points, and then to let them talk their fill. I must confess that, being present at the hearing, and observing so much impertinency, and some indecencies of counsel, and no reproof at all from the court, as useth to be in such cases, I wondered at the different method. For he sat still, and sometimes asked if they had all done, or if they had any thing more to say? Which often drew on more talk, though no other than repetition; all which, contrary to custom, he bore, till all said they had

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done, and had no more to say. It may not fall under every one's observation, that counsel at the bar will ever leave a cause, when it is some way hinted to them that the court is inclinable on their side; for judges, that have a bias, will seem to bear hard against the side they intend to determine for, and at last, come round off; the meaning of which is obvious. In this case, his lordship coming to his decree, took notice that there was somewhat very extraordinary, that made this cause to be brought on now before him, when so many worthy and learned judges had sat in his place, during the intervening time since the first decree, and he could not conceive what could be expected from him more, or otherwise, than from any of them. But since he was chosen out to determine this cause, he would do it according to the best of his judgment and conscience, and so dismissed the bill. He said he would not declare what he might have done, if the cause had come before him when recent, or in a decent time after the first decree, when fact of forgery (as was in the case) might reasonably be examined; but after great length of time, and since the parties, having had full liberty allowed them to proceed in due time, had done nothing, they had slipped their opportunity. And now, after so many chancellors and sessions of parliament let pass, to come at last to him, that had no reason to value himself against

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those great authorities, he thought he could not, and therefore would not, alter the decree. When this was done, the Earl of Macclesfield, who little expected his ease so soon, for he had always joined with his lordship's enemies (which supposed prejudice in a judge, many think, hath not a good influence upon a man's cause) went out of the court down into the hall, and walked gravely and silently to a bookseller's shop, and asked for his lordship's picture (then newly printed and sold) and, having paid down his shilling, rolled it up, and, without saying a word to any body, went away. Whether he was ever the more or less friend or enemy to his lordship, after this, I know not. But it is sure enough that the Roman Catholic party took umbrage, from this judicial sentence, among other actions of his lordship, to conclude he was inflexible to any purposes of theirs; and it confirmed a resolution, taken by the busy part of them, to heave him out of the way, before any of their critical designs were, or well could be, brought forward.

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